167-664

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~481~~. 189

THE UNITED STATES, APPELLANT,

vs.

JAMES C. REED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED NOVEMBER 15, 1894.

(15728.)

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To the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York:

The petition of James C. Reed respectfully presents:

First. That your petitioner resides at the city of New York, in the county and State of New York.

Second. That on the seventh day of July, in the year eighteen hundred and eighty-four, your petitioner was duly appointed shipping 2
commissioner for the United States of America at the port of New York, under and by virtue of an act of Congress entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," which said act was approved on the twenty-sixth day of June, A. D. 1884.

Third. That your petitioner thereafter and on the said seventh day of July aforesaid, 1884, duly qualified as and entered upon the discharge of the duties of the office of such shipping commissioner at the port of New York, and has continuously ever since held such said 3
office and discharged the duties thereof.

Fourth. That thereafter and on or about the twenty-sixth day of August, in the year eighteen hundred and eighty-four, the Secretary of the Treasury of the United States of America, under and
2 pursuant to the terms of said act of Congress, determined and 4
fixed the compensation of your petitioner as such said shipping commissioner at the sum of four thousand dollars per annum and in addition thereto one-half of the net surplus of the receipts of the office after the payment of salaries and expenses authorized, not to exceed, however, the maximum sum of five thousand dollars in any one year.

Fifth. That thereafter and during the fiscal year commencing on the first day of July, 1884, and ending on the thirtieth day of June, 1885, the net surplus of the receipts of the shipping commissioner's office at the port of New York from fees, after payment of all salaries and 5
expenses authorized by law, was the sum of three thousand nine hundred and ninety-one dollars and sixty-eight cents, of which said sum your petitioner became and was entitled to and did receive the sum of one thousand dollars, in addition to the sum of four thousand dollars specifically provided by the Secretary of the Treasury, on the twenty-sixth day of August, A. D. 1884.

Sixth. That thereafter and during the fiscal year commencing on the first day of July, 1885, and ending on the thirtieth day of June, 1886, the net surplus of the receipts of the shipping commissioner's office at the port of New York from fees, after payment of all sal- 6
aries and expenses authorized by law, was the sum of three thousand eight hundred and fifty-two dollars and seventeen cents, of which said sum your petitioner became and was entitled to and did receive the sum of one thousand dollars, in addition to the sum of four thousand dollars specifically provided for by the Secretary of the Treasury, on the twenty-sixth day of August, A. D. 1884.

Seventh. That thereafter the Congress of the United States of America passed an act entitled "An act to abolish certain fees
3 for official services to American vessels and to amend the laws 7

relating to shipping commissioners, seamen, and owners of vessels, and for other purposes" (vol. 24, page. 79), which said act was approved on the nineteenth day of June, 1886, whereby the laws requiring fees to be paid to the United States of America for services rendered to American vessels by the shipping commissioner were repealed, and provided that shipping commissioners who were paid wholly or partly by fees should be allowed and paid out of any money in the Treasury not otherwise appropriated such compensation for their services as they received prior to the passage of said act, which said
8 act went into effect on the first day of July, A. D. 1886.

Eighth. That between the first day of March, 1891, and the first day of April, 1893, the net surplus of the receipts of the shipping commissioner's office at the port of New York, from service fees, after payment of all salaries and expenses incident to the proper conduct of the office and the discharge of the duties thereof, was the sum of fourteen thousand five hundred and fifty-one dollars and twenty-nine cents, of which said sum your petitioner became and was entitled to have and receive in addition to the fixed sum of four thousand dollars the further sum of money at and after the rate of one thousand
9 dollars each year, and to be allowed and paid in addition thereto all of the expenses necessary and incident to the maintenance of the office for the transacting of the business of shipping commissioner at the port of New York.

And your petitioner further shows to this honorable court that he was not paid nor allowed the necessary and ordinary expenses incident to the maintenance of the office of a shipping commissioner at the port of New York; but, on the contrary, between the first day of March, A. D. 1891, and the first day of April, A. D. 1893,
10 4 he was obliged to and did pay or cause to be paid out of his private funds sundry large sums of money for the rental of of offices and the care and maintenance thereof at the city of New York, which were necessarily incurred for the proper transaction of the business of shipping commissioner at the port of New York, and the duties imposed upon him as such shipping commissioner by the statutes of the United States, which said expenses are more specifically set out in the bill of particulars hereto annexed and made part of this petition.

Ninth. That after the twentieth day of May, 1886, and until or
11 about the tenth day of April, in the year eighteen hundred and ninety, your petitioner, as such shipping commissioner, was provided by the United States of America with suitable offices, clerical assistance, books, blanks, fuel, office fixtures, repairs, and every facility for the proper discharge of the duties of his office as such shipping commissioner.

Tenth. That on the fifth day of April, eighteen hundred and ninety, your petitioner was required by the Secretary of the Treasury to remove from the offices theretofore assigned and provided by the
12 Government of the United States for the use of your petitioner as shipping commissioner at the port of New York, and it thereupon became and was necessary to procure other offices suitable for the discharge of the duties imposed by law upon your petitioner as such

shipping commissioner. That thereupon your petitioner was authorized and directed by the Secretary of the Treasury to procure and hire such necessary offices, and did thereafter procure and hire for the use of the United States of America offices and storage rooms in which to conduct the business and discharge the duties of the office of shipping commissioner at the port of New York and the storage of
5 deceased seamen's effects.' That the premises procured and 13
hired for the office of the United States shipping commissioner, his deputies, assistants, and clerks, was and is known as No. 25 Pearl street, and the storage rooms procured and hired for the storage of deceased seamen's effects was and is known as No. 19 Pearl street, both in the city of New York, and was so procured and hired at an aggregate annual rental of $1,500. That said annual charge or rental was a reasonable and fair charge for said premises.

Eleventh. That thereafter and on or about the tenth day of April, in the year eighteen hundred and ninety, in compliance with the direc- 14
tion of the Secretary of the Treasury, your petitioner removed the office of the shipping commissioner at the port of New York to the premises above referred to, and also removed the deceased seamen's effects to the storage rooms on Pearl street, in the said city of New York, and has continuously ever since the above date occupied such said premises as United States shipping commissioner, and used the same for the discharge of the duties imposed upon your petitioner as such shipping commissioner by the statutes of the United States.

Twelfth. That the rent of said premises on Pearl street, at the city 15
of New York, occupied by your petitioner as such said shipping commissioner, from the first day of March, A. D. 1891, to the first day of April, A. D. 1893, amounts in the aggregate to the sum of three thousand one hundred and twenty-five dollars, and of which a bill of particulars is hereto annexed, and was and is a fair and reasonable charge, and an expense incurred and made necessary by reason of the direction of the Secretary of the Treasury to your petitioner to move the offices of the United States shipping commissioner at the port of New York from the premises theretofore assigned, and the
6 proper discharge of the duties imposed by law upon your peti- 16
tioner as such said shipping commissioner during said period of time, to wit, from the first day of March, A. D. 1891, to the first day of April, A. D. 1893.

Thirteenth. That your petitioner has paid the charge for the rental of said premises, amounting in the aggregate to the sum of three thousand one hundred and twenty-five dollars out of his own private funds, and had duly demanded payment thereof from the proper Department of the Government of the United States of America, and payment thereof has been refused, on the alleged ground that the Congress of the 17
United States of America has failed to make an appropriation for the payment thereof, notwithstanding the Secretary of the Treasury has several times admitted the propriety of your petitioner's incurring the expense of the rental of such said premises, and has also recommended to the Congress of the United States of America that an appropriation be made to cover such said expense, and to reimburse your petitioner, which said recommendation of the Secretary of the Treasury is in the words and figures following:

TREASURY DEPARTMENT,
Washington, D. C., Dec. 8, 1890.

To the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: I have the honor to invite your attention to the fact that there is no appropriation for the expenses of the offices of the United States *States* shipping commissioners. Section 27 of the act of June 26, 1884, authorized the Secretary of the Treasury to pay expenses of shipping offices, but this provision was not followed in section 1 of the act of June 19th, 1886, abolishing fees in such offices, said section authorizing only the payment of the shipping commissioner's salary and the compensation of his clerks, without reference to other expenses. The maximum compensation allowed to any shipping commissioner under the law is $5,000, where the fees reported are sufficient for the payment of that amount, and the payment by the commissioner therefrom of the cost of rent, heating, and other expenses might take a large portion of the amount.

A copy of a letter, dated October 15, 1890, from the United States shipping commissioner at New York, is inclosed herewith, as showing his objections to the existing legislation upon the subject.

Respectfully,

W. WINDOM, *Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 14, 1891.

To the SPEAKER, HOUSE OF REPRESENTATIVES.

SIR: Referring to the communication of the Secretary of the Treasury of December 8, 1890, inviting the attention of Congress to the fact that there has been no provision for the payment of the expenses of the office of the United States shipping commissioners since June 30th, 1886, and to the copy of a letter from the shipping commissioner at New York regarding the expenses of that office (accompanying said communication), I have the honor to state that, in my opinion, a necessity exists for an appropriation to cover such expenses, and I respectfully recommend that the following clause be inserted in the general deficiency bill:

Five thousand dollars, or so much thereof as may be necessary to reimburse the shipping commissioner at New York for his expenditures for office fixtures, books and stationery, heating apparatus and fuel, telephone service, office rent, and other expenses connected with the administration of his office, from the first day of July, eighteen hundred and eighty-six (at which time the provision for the payment thereof by the Treasury Department was omitted in the act of June nineteenth, eighteen hundred and eighty-six), to the first day of July, eighteen hundred and ninety-one; and also the further sum of two thousand five hundred dollars, or so much thereof as may be necessary, for similar expenses that may have been or may be incurred by shipping commissioners at other ports during said period, such expenditures to be audited and such reimbursement to be made under the direction of the Secretary of the Treasury.

Respectfully, yours,

A. B. NETTLETON, *Acting Secretary.*

Wherefore, your petitioner asks judgment against the said United States of America for the sum of three thousand one hundred and twenty-five dollars, and such other relief in the premises as to this honorable court may seem just and proper, with the cost of this proceeding to be taxed.

JAMES C. REED, *Petitioner.*
G. E. P. HOWARD,
Attorney for Petitioner, 35 Wall Street, New York City.

9 *Bill of particulars.*

Twenty-five months' rent of the second and third floors of No. 25 Pearl street, New York City, from March 1, 1891, to April 1, 1893, at the rate of $100 per month..	$2,500.00
Twenty-five months' rent of the basement of No. 19 Pearl street, New York City, from March 1, 1891, to April 1, 1893, at the rate of $25 per month.....	625.00
Total	$3,125.00

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

JAMES C. REED, being duly sworn, deposes and says: That he is *is* the petitioner named in the foregoing petition; that said petition is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JAMES C. REED.

Sworn to before me this seventh day of April, A. D. 1893.
JOHN A. SHIELDS,
U. S. Commissioner, Southern District of New York.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. James C. Reed, petitioner, against The U. S. of America, defendant. Petition. G. E. P. Howard, atty. for petitioner, 35 Wall st., N. Y. U. S. circuit court. Filed Apr. 7, 1893. John A. Shields, clerk.

10 Circuit court of the United States, southern district of New York.

JAMES C. REED,
against
THE UNITED STATES OF AMERICA.

The United States of America, the defendants above named, by Edward Mitchell, their attorney for the said district, for answer to the petition of the said plaintiff:

Deny that they have any knowledge or information sufficient to form a belief as to the truth of any of the allegations in said petition contained.

Wherefore the defendants demand judgment that the petition of the said plaintiff be dismissed with costs.

June 19, 1893.

EDWD. MITCHELL, *U. S. Atty.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

CHARLES D. BAKER, being duly sworn, deposes and says: That he is an assistant United States attorney for the southern district of New York, and has charge of the above-entitled suit; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters
31 11 therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

CHARLES D. BAKER.

Sworn to before me this 19th day of June, 1893.

GILBERT E. ROGERS,
Notary Public, Kings & New York Counties.

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed versus United States. Answer. Edward Mitchell, United States attorney, attorney for defendant. Due service of a
32 copy of the within is hereby admitted. New York, June 19, 1893. G. E. P. Howard, attorney for plaintiff. To G. E. P. Howard, esq., attorney for plaintiff. U. S. circuit court. Filed Jun. 21, 1893.
33 John A. Shields, clerk.

34 12 Circuit court of the United States for the southern district of New York.

JAMES C. REED, PETITIONER,
against
THE UNITED STATES OF AMERICA, DEFENDANT.

35 The above-stated cause being at issue and ready for trial, and the respective parties thereto consenting, it is

Ordered, that the issues in the above-stated cause be, and the same hereby are, referred to John A. Shields, esquire, clerk of this court, as referee, to take the evidence offered by the petitioner and the defendant and to report the same, together with his opinion, to the court with all convenient speed.

WM. J. WALLACE.

The entry of the above order in the above cause is hereby consented to.
36 New York, June 21st, 1893.

EDWD. MITCHELL,
U. S. Atty.
G. E. P. HOWARD,
Atty. for Petitioner.

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed, petitioner, vs. United States of America, deft. Order of reference. G. E. P. Howard, atty. for petitioner, No. 35 Wall street, N. Y. City. U. S. circuit court. Filed Jun. 23, 1893. John A. Shields, clerk.

13 United States circuit court, southern district of New York. 37

JAMES C. REED, PETITIONER,
versus
THE UNITED STATES OF AMERICA, DEFENDANT.

Pursuant to notice under the order of reference heretofore made by 38
the Honorable William J. Wallace, circuit judge, the petitioner now moves to take testimony in his behalf.

Appearances: John A. Shields, esq., referee; G. E. P. Howard, for the petitioner; Charles D. Baker, assistant United States attorney, and Edward Mitchell, United States attorney, for the defendant. 39

The stenographer being duly sworn to take the minutes of the evidence and transcribe the same correctly, the petitioner's counsel offers as the first witness in the case James C. Reed.

JAMES C. REED, being duly sworn, testifies as follows:

Q. Are you the petitioner in this case of James C. Reed against the United States of America?

A. I am.

Q. Where do you reside?

A. New York City.

14 Q. Are you the United States shipping commissioner at 40
the port of New York?

A. I am.

Q. How long have you been such?

A. Since May 12, 1884.

Q. Have you received more than one appointment as United States shipping commissioner at this port?

A. Yes; I was first appointed in May, 1884, by the U. S. circuit court for the southern district of New York, and I qualified under that appointment as United States shipping commissioner and entered upon the discharge of my duties as such immediately. I continued to act as shipping commissioner under that appointment of the circuit court and until the first day of July, 1884, when I was reappointed 41
United States shipping commissioner for this port by the Secretary of the Treasury of the United States, and have continued to hold such office and discharge the duties thereof continuously from that day down to the present time.

Q. If you know, state by what authority the circuit court appointed you United States shipping commissioner at this port.

A. Under the act of June 7th, 1872.

Q. If you know, state by what authority the Secretary of the Treasury appointed you United States shipping commissioner at this port.

A. Under the act of June 26, 1884, commonly known as the "Dingley bill." 42

Q. Did you or did you not qualify pursuant to the statute and the regulations of the Treasury Department, under the appointment made by the Secretary of the Treasury?

A. I did, and have continued to discharge the duties of United States shipping commissioner at this port ever since such appointment.

Q. Are you acquainted with the compensation paid to and received by the United States shipping commissioner at the port of New York, under the act of 1872 and 1884? If so, state what compensation was allowed, and what expenses incident to the conduct of the office of shipping commissioner and the discharge of the duties of that office were allowed by the circuit court under the act of 1872.

A. Compensation was allowed the shipping commissioner at this port under the act of 1872 for the sum of $5,000 per annum. In addition to which sum he was allowed cost of the rental of his necessary offices, salaries of deputies and clerks, and all the incidental expenses connected with the renting of the office.

Q. If you know, state what was the compensation paid to and received by the United States shipping commissioner for his services as such, under the act of 1884.

A. The same as that received under the act of 1872, because the act of 1884 provided that shipping commissioners should have no change made in the compensation received by shipping commissioners.

Q. Did the Secretary of the Treasury fix the compensation of the United States shipping commissioner at this port? If so, state at what sum, and when such compensation was fixed.

A. Yes; by letter from the commissioner of navigation, dated September 12, 1884, and I was informed on the 26th day of August of that year that the Treasury Department had determined to allow me compensation as shipping commissioner at the rate of $4,000 per annum and one-half of the net surplus of the fees collected after the payment of salaries and expenses authorized, such compensation not to exceed the sum of $5,000 per annum, the maximum limit by law.

Q. Was this sum of $4,000 and one-half of the net surplus of the fees collected after the payment of salaries and expenses understood to be for your personal services as commissioner?

A. Yes.

Q. Have you the letter of September 12, 1884, referred to in your previous answer?

A. I have and now produce it.

Mr. HOWARD. I now offer this letter in evidence, and it will be marked Petitioner's Exhibit No. 1. The letter is as follows:

TREASURY DEPARTMENT, BUREAU OF NAVIGATION.

JAMES C. REED, Esq.,
U. S. Shipping Commissioner, 187 *Cherry Street*,
New York City.

SIR: The Department, on the 26th ultimo, determined to allow you compensation as shipping commissioner at the rate of $4,000 per annum and one-half of the net surplus of the fees collected by you after the payment of salaries and expenses authorized, such compensation not to exceed the maximum limited by law, it being understood

that from such compensation you shall pay all your official expenses except for employees and rent, and that the compensation and all expenses shall not exceed the aggregate of the fees collected and deposited during the year.

You are, therefore, requested to forward an account of your receipts and estimated expenditures for the months of July and August and each month thereafter, showing on the debit side the fees deposited and upon the credit side the expenses in detail to be paid from the 48
general fund for employees and rent and your compensation, which will include the expenses to be borne by yourself. These latter expenses, however, will be stated in detail in a separate column, as provided for in the inclosed form.

Please certify, at the bottom of the account, that it is correct.

A certificate should accompany the account, from the clerk of the U. S. circuit court, showing that bond has been filed by you, and oath taken as prescribed by law.

17 In addition to the account above mentioned, you will forward 49
the monthly returns required by the circular of July 21, 1884, on forms 16, 18, and 19, general customs catalogue, unless you have already done so.

An appointment as disbursing clerk is transmitted herewith, and a form of bond, which you will please execute, and return to this office with your account.

Very respectfully, T. B. SANDERS,
Deputy Commissioner.

(3 inclosures.)

Q. Do you know, and if so, state what expenses incident to the 50
conduct of the office of the shipping commissioner of the port of New York were allowed by the circuit court under the act of 1872.

A. All expenses incident to the business of the office, salaries, salary of commissioner at $5,000 per year, salaries of deputies, clerks, runners, janitor, rental of office, fuel, lights, printing, stationery, postage, books of account, blank forms, ice, subscription to "Maritime Register," telegrams, furniture, office fixtures and repairs, and all other incidental expenses incident to the discharge of the duties imposed upon the shipping commissioner by act of Congress.

Q. What was the practice, if you know, and if so, state, in relation 51
to the allowance and payment of expenses incurred by the shipping commissioner at the port of New York, in the discharge of his duties as such commissioner, subsequent to July 1, 1884, under the appointment of the Secretary of the Treasury?

A. They allowed me to charge under my monthly account against the fees earned, the salary of the commissioner at the rate of $5,000 per annum, salaries of clerks, runners, janitor, office rent, and for certain printing, telegrams, decorating the building on the death
18 of General Grant, the purchase of certain blanks and blank 52
forms, when the stock I had purchased previous to July 1, 1884, had been exhausted.

Q. Do you know, and if so, state, what was the aggregate amount of fees at the port of New York for the shipping and discharging of seamen and other duties executed by you under and pursuant to act

of Congress and the regulations of the Treasury Department relating to the duties of the United States shipping commissioner, between the 1st day of July, 1884, and the 30th day of June, 1885? And if yea, state what they were.

A. The fees received amount to $19,126.75.

Q. Do you know what was the aggregate expenses incident to the
53 discharge of the duties of the shipping commissioner, between the 1st day of July, 1884, and the 30th day of June, 1885? If yea, state.

A. Yes; the aggregate amount of expense was $16,135.07, and was incurred for salary of the shipping commissioner at the rate of $5,000 per year, salary of deputies and clerks, rent of office, printing, blanks, etc., etc., and the entire amount was necessarily incurred in the discharge of my duties as United States shipping commissioner at this port; the accounts were duly rendered therefor to and audited by the Secretary of the Treasury.

Q. And did you likewise render accounts to the Secretary of the
54 Treasury of the receipts and expenses incident to the conduct of the office during the year, between the 1st day of July, 1885, and the 30th day of June, 1886?

A. I did; yes, sir.

Q. If so, state what was the net surplus of the receipts of your office as United States shipping commissioner over and above the necessary expenses thereto, between the 1st day of July, 1884, and the 30th day of June, 1885?

A. $2,991.68.

Q. Were all of the expenses incurred by you in the discharge of your duties as shipping commissioner included in the aggregate above
19 testified to, during the year commencing the 1st day of July,
55 1884, and ending the 30th day of June, 1885, allowed by the Secretary of the Treasury?

A. Yes; they were all allowed.

Q. Do you know what was the aggregate amount of fees received by you as shipping commissioner for the port of New York, for shipping and discharging seamen, and the other duties executed by you under and pursuant to the act of Congress in reference to the duties of shipping commissioner, between July 1st, 1885, and the 30th day of June, 1886? If yea, state what they were.

A. The amount of fees collected was $19,322, and the aggregate expenses necessarily incurred was $16,469.83, for which I rendered
56 accounts to the Secretary of the Treasury, which accounts were audited and allowed by the Secretary. The net surplus for the last-mentioned year, over and above expenses and disbursements, amounted to the sum of $2,852.17, all of which was duly audited and allowed.

Q. During the year beginning July 1st, 1884, and ending June 30th, 1885, what compensation was allowed and paid to you for your services as United States shipping commissioner by the United States of America?

A. The sum of $5,000 net.

Q. State what compensation was allowed and paid to you by the United States, for your services as United States shipping commis-
57 sioner at this port, between the 1st day of July, 1885, and the 30th day of June, 1886.

A. $5,000.

Q. Since the act of 1884, commonly known as the "Dingley bill," has there to your knowledge been any change or amendment of the law in relation to shipping commissioners; and if so, what change has been made, and when did the amendment go into effect?

A. Yes; the law has been amended, and the amendment went into effect July 1, 1886. There was no change in the compensation allowed and to be paid to the shipping commissioner by that amendment. The only change made in relation to the office by the
20 United States was to do away with the collection of fees there- 58
tofore charged to and paid by the representatives of the ships to which services were rendered for shipping and discharging and paying off the seamen. Under that act, the act of 1886, all charges to be paid by the representatives of the vessels were abolished, although the services to be rendered by the shipping commissioner were continued, as expressly provided by previous acts of Congress. Under the act of 1886, instead of receiving cash for services rendered to the masters and owners of vessels and to the seamen, a service voucher is required by the Secretary of the Treasury, to be obtained by the shipping commissioner from the master or agent of each and every vessel to whom 59
services are rendered by the shipping commissioner. The shipping commissioner is required each month to make up accounts showing in detail what services have been rendered, and accompany such account by these service vouchers. The service voucher taking the place of the cash theretofore received from the masters and representatives of vessels and seamen, for services rendered by the commissioners under the various acts of Congress. The accounts and the so-called service vouchers showed in detail the amount and value pursuant to the fee bill theretofore enacted by Congress, of the services rendered by the United States shipping commissioner during each month. The com- 60
pensation of the shipping commissioner was not changed. The act of 1886 specifically provided that the compensation theretofore allowed and paid the shipping commissioners should be continued. I have with me a blank form of service voucher.

(Service voucher offered in evidence and marked Petitioner's Exhibit No. 2.)

21 (Form 1628.) 61

No. .

Services by U. S. shipping commissioner at to vessel bound to arrived from .

(This voucher is to be forwarded to the Bureau of Navigation.)

	Number.	Rate.	Value of service.
Seamen shipped, foreign (generally)			
Seamen shipped, coastwise, or to Canada, New Foundland, West Indies, or Mexico.....			
Seamen discharged, foreign (generally).....			
Seamen discharged, coastwise, or from Canada, New Foundland, West Indies, or Mexico...			

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PORT OF , 189 .

I certify that the above statement is correct.

Master or Agent. 63

"This voucher, being the evidence on which money is to be paid by the Government, should be carefully examined by the master before he signs it. None of the services charged are to be paid by the master."

Q. The act you have just referred to is the act of the 19th of June, 1886, which is found in volume 24, page 79, of the U. S. Statutes at Large, is it not?

A. Yes.

Q. If you know, state what was the object of making these detailed reports to the Secretary of the Treasury of the services rendered and the value thereof after the act of June 19th, 1886, went into effect.

64 22

A. It was in order that the Secretary of the Treasury might be informed of the amount and value of the services rendered by the shipping commissioners at the various ports at which shipping commissioners were located.

Q. Subsequent to the 1st day of July, 1886, after the act of June 19th, 1886, went into effect, were you required to render a report to the Secretary of the Treasury of the amount and value of the services performed, the service fees earned, and also of the expenses incident and necessary to the proper conduct of your office as shipping commissioner at the port of New York?

65 A. I was required to render reports monthly upon the last day of each month. Such requirement is continued down to the present time, and I have complied therewith fully.

Q. Do you know, and if so state, what was the aggregate amount of service fees reported as earned by you as shipping commissioner, between the 1st day of March, 1891, and the 1st day of April, 1893?

A. I do; they were $49,059.00.

Q. If you know, state what was the aggregate amount of expenses necessarily incurred and incident to the proper discharge of the office of shipping commissioner and conduct of the business, under the

66 requirements of the statutes of the United States and regulations of the Secretary of the Treasury, between the 1st day of March, 1891, and the 1st day of April, 1893.

A. I do; the aggregate amount of the expenses necessarily incurred by me in the proper discharge of the duties of the office amounted to the sum of $34,507.71.

Q. In the aggregate amount which you have given as necessarily incurred by you as shipping commissioner, do you include the item of rental paid by you for the offices in which to discharge the duties imposed upon you as shipping commissioner by U. S. statutes?

A. I do.

23 Q. State where these offices are located.

67 A. The offices are located at 25 Pearl street; and in addition to the offices, I have been obliged to and have hired storage room for the storage of deceased seamen's effects, which by law I am required to receive and care for, under and pursuant to the direction of the circuit court of the United States. The storage room is located at No. 19 Pearl street.

Q. What was the aggregate amount incurred and paid by you for the rent of the offices at 25 Pearl street, and the storage room at 19 Pearl street, between the 1st day of March, 1891, and the 1st day of April, 1893?

A. The period of time between the 1st day of March, 1891, and the 1st day of April, 1893, covers twenty-five months. The rental 68
for the offices at 25 Pearl street is $100 per month, and amounts for the period mentioned to the sum of $2,500. The rental of the basement, No. 19 Pearl street, was at the rate of $25 per month, and the aggregate for the period named is $625, making a total sum paid by me out of my own pocket, for rent alone, during the period between March 1st, 1891, and April 1st, 1893, $3,125.00.

Q. Was the entire amount of the expenses which you have stated were necessary and incident to the proper conduct of the business of your office, between the 1st day of March, 1891, and the 1st day of 69
April, 1893, reported by you to the Secretary of the Treasury each month, and were they allowed and paid back to you?

A. They were reported, but not paid.

Q. Was not part of this amount of $3,125 paid by you for rental between the 1st day of March, 1891, and the 1st day of April, 1893, been repaid to you by the Secretary of the Treasury, or any representative of the Government of the United States?

A. It has not.

Q. Is such stated sum still owing and due you from the United States?

A. It is, no part thereof having been paid to me.

24 Q. Do you know, and if so state, why the Secretary of the 70
Treasury failed to pay the amount of the expenses necessarily incurred by you in the discharge of your duties, during the period of time between March 1st, 1891, and April 1st, 1893?

A. The only reason that I know of is, that the Treasury Department claimed that Congress had made no appropriation for the payment of rent and other expenses incident to the discharge of my duties, except the salary of the commissioner at $5,000 per year, and the salaries of my deputies and clerks.

Q. Has your compensation and allowance for your personal services been changed, altered, or modified by the Secretary of the Treas- 71
ury, or any other official of the Government of the United States, since the same was fixed by the Secretary of the Treasury in the year 1884 down to the present day?

A. It has not been modified or changed. I am still entitled to have and receive in full for my personal services the sum of $4,000 and one-half of the earnings as shown by the service vouchers, not to exceed the sum of $5,000 per annum, which compensation at the rate of $5,000 per annum has been regularly paid to me down to the present day.

Q. Have you the vouchers and receipts for the various amounts of rent paid by you from the 1st day of March, 1891, to the 1st day of 72
April, 1893?

A. I have.

Q. What do these vouchers aggregate in amount?

A. $3,125.00.

(Counsel for the petitioner offers in evidence the vouchers referred to by witness.)

Q. By whom was this amount of $3,125 paid?

A. By me, out of my own pocket.

Q. Have you duly demanded payment thereof from the United States?

A. I have.

Q. Has any part thereof been paid?

A. No.

73 25 Q. Are the premises at 25 Pearl street, occupied by you as offices, necessary for the proper discharge of the duties imposed upon you by law as shipping commissioner?

A. They are.

Q. Could you discharge the duties of the office of shipping commissioner without obtaining offices such as those now occupied by you?

A. No; it is absolutely necessary, and always has been necessary, that the shipping commissioner should have offices in which his clerks and deputies could perform their duties, such as the shipping and paying off of seamen, and this necessity was fully recognized by the circuit court for the southern district of New York prior to the
74 amendment of the act giving the Secretary of the Treasury supervisory charge of the various shipping commissioners, and was also recognized by the Treasury Department by devoting a portion of the United States Barge Office at the city of New York to the use of the shipping commissioner and his deputies.

Q. Have you had any correspondence with the Secretary of the Treasury, and do know of any correspondence of the Secretary of the Treasury with the Speaker of the House of Representatives in relation to the payment of the expenses incurred by you as shipping commissioner for rental and otherwise?

A. I have had such correspondence, and now produce Executive
75 Document No. 263, House of Representatives, Fifty-first Congress, second session, which contains two of my communications to the Secretary of the Treasury on that subject and his letters to the Speaker of the House of Representatives.

(Counsel for the petitioner offers these various letters in evidence, and they are marked Petitioner's Exhibit No. 3.)

[51st Congress, 2d session, House of Representatives, Ex. Doc. No. 263. Expenses of the office of the United States shipping commissioner.

76 26 Letter from the Acting Secretary of the Treasury, recommending an appropriation for the expenses of the office of the United States shipping commissioner and transmitting a copy of a communication on the subject from the United States commissioner at New York. February 14th, 1891. Referred to the Committee on Appropriations.]

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,

77 *Washington, D. C., Feb.* 14, 1891.

SIR: Referring to the communication of the Secretary of the Treasury of December 8th, 1890, inviting the attention of Congress to the fact that there has been no provision for the payment of the

expenses of the office of the United States shipping commissioners since June 30th, 1886, and to the copy of a letter from the shipping commissioner at New York regarding the expenses of that office (accompanying said communication), I have the honor to state that, in my opinion, a necessity exists for an appropriation to cover such expenses, and I respectfully recommend that the following clause be 78
inserted in the general deficiency bill:

Five thousand dollars, or so much thereof as may be necessary, to reimburse the shipping commissioner at New York for his expenditures for office fixtures, books and stationery, heating apparatus and fuel, telephone service, office rent, and other expenses connected with the administration of his office from the first day of July, 1886 (at which time the provision for the payment thereof by the Treasury Department was omitted in the act of June 19th, 1886), to the first day of July, 1891; and also the further sum of two thousand
27 and five hundred dollars, or so much thereof as may be nec- 79
essary, for similar expenses that may have been or may be incurred by shipping commissioners at other ports during said period. Such expenses to be audited and such reimbursement to be made under the direction of the Secretary of the Treasury.

Respectfully, yours,

A. B. NETTLETON,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

NOTE.—A copy of another communication on this subject, dated Feb. 12th, 1891, from the United States shipping commissioner at New York, herewith transmitted. 80

OFFICE OF THE U. S. SHIPPING COMMISSIONER,
New York, February 12th, 1891.

SIR: I have the honor respectfully to request your further action with regard to the necessary expenses of the administration of the public business of this office. In a communication addressed to the Speaker of the House of Representatives by your immediate predecessor, dated December 8th, 1890, a copy whereof (printed as Executive Document No. 71, H. R.) is herewith enclosed, he invited attention to the fact that there is no appropriation for the expenses of the office of 81
the United States shipping commissioner, and that while section 27 of the act of June 26, 1884, authorized the Secretary of the Treasury to pay the expenses of such offices, this provision was not found in section 1 of the act of June 19th, 1886, abolishing fees in such offices, said section authorizing only the payment of the shipping commissioner's salary and the compensation of the clerks, without reference to other expenses.

In a communication from this office, dated New York City,
28 October 15th, 1890 (a copy of which is herewith transmitted), 82
it was shown that from January 1st, 1890, to October 1st, 1890, I had been called upon to make, from my own private resources, for the necessary expenses of this office, disbursements amounting to $2,122.62.

A. $3,125.00.

(Counsel for the petitioner offers in evidence the vouchers referred to by witness.)

Q. By whom was this amount of $3,125 paid?

A. By me, out of my own pocket.

Q. Have you duly demanded payment thereof from the United States?

A. I have.

Q. Has any part thereof been paid?

A. No.

73 25 Q. Are the premises at 25 Pearl street, occupied by you as offices, necessary for the proper discharge of the duties imposed upon you by law as shipping commissioner?

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27 and five hundred dollars, or so much thereof as may be nec- 79
essary, for similar expenses that may have been or may be incurred by shipping commissioners at other ports during said period. Such expenses to be audited and such reimbursement to be made under the direction of the Secretary of the Treasury.

Respectfully, yours,

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Acting Secretary.

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New York, February 12th, 1891.

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the United States shipping commissioner, and that while section 27 of the act of June 26, 1884, authorized the Secretary of the Treasury to pay the expenses of such offices, this provision was not found in section 1 of the act of June 19th, 1886, abolishing fees in such offices, said section authorizing only the payment of the shipping commissioner's salary and the compensation of the clerks, without reference to other expenses.

In a communication from this office, dated New York City,
28 October 15th, 1890 (a copy of which is herewith transmitted), 82
it was shown that from January 1st, 1890, to October 1st, 1890, I had been called upon to make, from my own private resources, for the necessary expenses of this office, disbursements amounting to $2,122.62.

Since the latter date, to wit, from October 1st, 1890, to February 1st, 1891, I have been called upon to make, from my own private resources, for the similar necessary expenses of this office, additional disbursements amounting to $550.81.

In a similar way, from February 1st, 1891, to July 1st, 1891, I may be called upon to make, from my private resources, for the similar necessary expenses of this office, further disbursements, amount-
83 ing to not less than $712.50.

The situation at the port of New York, with respect to the necessary expenses of properly conducting the public business of the shipping commissioner, is like none other in several particulars.

In the first place, in the very necessities of the case, at the greatest maritime port of the United States, the public business of the office can not be conducted with proper regard for the convenience of the people as inexpensively as other ports. For an example, since July 1st, 1886, the shipping commissioner at the port of New York has been constrained to expend nearly seven hundred dollars for rent of
84 telephone alone, not because his office ever had occasion to telephone to any merchant, but because all the shipping merchants have constant need to communicate with that office by that common means of intercourse.

In the second place, the transactions of this office, by reason of its being at the greatest port of entry, are of such magnitude as to require the consumption of books of account and stationery far beyond the necessities of such offices at our other ports.

In the third place, by reason of the fact that the quarters previously occupied by this office in the United States Barge Office building
85 29 were required last April, at one day's notice, for the use of the Commissioner of Immigration, the shipping commissioner at New York had to encounter the unusual expense of moving his office, of renting suitable quarters for his office, and the fitting of such offices for the conduct of the public business, the rental thereof costing him $125 per month, and the moving and the fixtures thereof costing him $967.58, no appropriation for this unforseen expense being available.

In view of the fact that the provision in the act of June 26th, 1884, to pay the office expenses of the shipping commissioner was dropped (probably inadvertently) in the act of June 19th, 1886, and in consequence thereof the compensation of the shipping commissioner'
86 (especially the compensation of the shipping commissioner at the port of New York) have been practically more or less reduced below the sums which it was intended they would receive as compensation for their services, I respectfully request your further action with regard to the expenditures of this office and others.

Very respectfully,

JAMES C. REED,
U. S. Shipping Commissioner.

To the SECRETARY OF THE TREASURY,
87 *Washington, D. C.*

30 [House Ex. Doc. No. 71, Fifty-first Congress, second session. Letter from the Secretary of the Treasury, calling attention to the fact of there being no appropriation for the expenses of the offices of United States shipping commissioners, together with a letter from United States shipping commissioner at New York relating to the subject.] 88

TREASURY DEPARTMENT,
Washington, D. C., December 8, 1890.

SIR: I have the honor to invite your attention to the fact that 89
there is no appropriation for the expenses for the offices of the United States shipping commissioners. Section 27 of the act of June 26th, 1884, authorized the Secretary of the Treasury to pay expenses of shipping offices, but this provision was not followed in section 1 of the act of June 19th, 1886, abolishing fees in such offices, said section authorizing only the payment of the shipping commissioner's salary and the compensation of his clerks, without reference to other expenses. The maximum compensation allowed to any shipping commissioner under the law is $5,000, where the fees reported are sufficient for the payment of that amount and the payment by the 90
commissioner therefrom of the cost of rent, heating, and other expenses might take a large portion of the amount.

A copy of a letter, dated October 15th, 1890, from the United States shipping commissioner at New York is enclosed herewith, as showing his objections to the existing legislation upon the subject.

Respectfully, yours,

W. WINDOM, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

31 OFFICE UNITED STATES SHIPPING COMMISSIONER, 91
New York City, October 15, 1890.

SIR: I have to acknowledge the receipt of your communication (T. B. S.) of the 11th instant, in answer to mine of the 8th instant, wherein I request that suitable provision be made for the heating of this office during the coming season, in which you state that the Department is not aware of any appropriation under which the expense of such heating can be paid, and that any further statement that I "may desire to make upon the subject will receive full consideration."

In support of the proposition that such expenses, the cost of heating the office in which the shipping commissioner conducts the public 92
business, should not be a charge upon his personal resources, I do not know that I can say anything beyond the argument offered in my communication of September 23rd, 1890, with respect to the payment of rental of such office.

In that communication I requested authority to charge in my monthly account for September, 1890, against the surplus earnings of this office (as had been the practice prior to the passage of the act of June 19th, 1886) the sum of $100, paid by me for the rent of the office of the shipping commissioner at the port of New York for that month, for the reason that said act, which abolished the collection of 93
fees, provided that the Secretary of the Treasury "shall allow and pay (the shipping commissioners), from any money in the Treasury

not otherwise appropriated, said officers such compensation as each would have received prior to the passage of" said act, and for the further reason (to take that one example) that the compensation of the shipping commissioner at the port of New York for the month of September, 1890, unless he was authorized to include such disbursement as a charge in such monthly account (and was reimbursed
94 32 accordingly), would evidently be $100 less than the compensation he would have received " prior to the passage " of the act of June 19th, 1886, under the practice which at that time obtained. In answer to that communication, the Department, under date of September 27, informed me that there was no appropriation from which such an expenditure could be reimbursed.

With all due respect, I beg leave to renew my suggestion that it is not a question of appropriations. As I ventured to suggest in my communications of September 23rd, " It is possible that no provision for meeting the expenses of the offices of the shipping commissioners was deemed necessary in the law (the act of June 19th, 1886) to abol-
95 ish their fees, because it permitted the Secretary of the Treasury to reimburse them for such expenditures," in this: " It authorized and required him to pay such compensation as each would have received prior to the passage of the act of June 19th, 1886."

The statutory compensation due me for services as shipping commissioner since January 1st, 1890 (to October 1st), is $3,750.

But since that date, for the necessary expenses of that office, I have made from my own private resources the following disbursements :

Stationery	$143.70
Telephone	37.70
96 Maritime Register subscriptions	25.00
Freight on blanks from Department	2.24
Ice	17.20
Telegrams	4.88
Repairs to furniture	6.00
Moving from United States Barge Office	216.00
Fitting up offices, 25 Pearl street	951.58
Rent of room for seamen's effects	141.66
Rent of offices, 25 Pearl street	576.66
Total	$2,122.60

97 33 It is therefore evident that the compensation which I have received for my services as shipping commissioner during the past nine months instead of being $3,750 has been $1,627.38.

To reduce this condition of things to an absurdity it seems only necessary to contemplate what would have been the result but for the rare good luck that enabled me to secure last April a lease of the two floors now occupied by this office at No. 25 Pearl street at a rental of $1,200 per annum. The only other suitable premises vacant and to be had at that time in the proper locality were at No. 5 State street, for which a rental of $3,000 per annum would have had to be paid.
98 Consequently, but for the mere accident that No. 25 Pearl street had been suddenly vacated (out of the renting season) I should have

been constrained to lease premises for $3,000 per annum, which would have reduced the net compensation received for my services for the past nine months to the magnificent aggregate of $277.38.

To produce this illustration further, and yet not exceed the limit of possibility, if I had been compelled to pay a rental of $3,500 per annum for suitable quarters for the offices of the shipping commissioner (and, certainly, on one floor no such space as was assigned him in the United States Barge Office building, which was inadequate, however, could be had for less), then for the past nine months I 99
would have received no compensation whatever, but, on the contrary, should have had to pay $97.50 from my own pocket for the honor of being shipping commissioner at the port of New York.

Of course, the existing condition of things in the matter discussed is manifestly unfair to a public official, and I have no doubt but that the Department so regards it. But I think it should not be permitted to continue longer if any way can be found to solve the situation, it for no other reason than that the United States should, for an
34 example, own the fixtures of this office, or the necessary heat- 100
ing apparatus, if I should see fit to buy six stoves with my own money for the use of the office of the United States shipping commissioner.

In view of the position of the Department upon the questions involved in this matter, it seems to me that the readiest and most conclusive determination of them might be reached by a friendly suit by the shipping commissioner against the United States for the amount of his disbursements for the expenses of his office.

I am ready to bring such an action, but I should question the official propriety of my so doing unless some intimation that such a 101
course on my part would not at least have the disapproval of the Secretary of the Treasury.

Yours, respectfully,

JAMES C. REED,
U. S. Shipping Commissioner.

The SECRETARY OF THE TREASURY.

Q. When you were appointed shipping commissioner for the port of New York, where were the offices of the shipping commissioner located?

A. In a large building four stories high, No. 187 Cherry street, which was erected for the purpose.

Q. Did you, as shipping commissioner, occupy the office at No. 102
187 Cherry street at any time; and if so, for how long?

A. I did until I was required to remove therefrom, for the reason that the owners of the building desired to use the building for storage purposes, and demanded a rent of $7,000 per year. I immediately communicated with the Secretary of the Treasury in relation to the removal of my office on the 23rd of March, 1886, and I notified the Secretary of the Treasury that there was a place at No. 180 Cherry street which could be obtained for $100 a month, which I
35 thought might be made suitable for the discharge of the busi- 103
ness incident to the office of shipping commissioner. In a letter dated March 25th, 1886, the Secretary of the Treasury authorized me

to take the premises named at that rental, the rent to be paid from fees collected by my office. The shipping commissioner at this port is, however, a very undesirable tenant, because in his office he engages about 15,000 seamen per annum, and pays off about 10,000. This number of men, with the agents and sailor's landlords and sailor's creditors, of course, constitutes a very great crowd, and the owner of No. 180 Cherry street, when he learned the nature of my business, declined to rent them to me.

104 (Counsel for petitioner now offers in evidence letter of the Secretary of the Treasury, dated March 25th, 1886, referred to in the answer of the witness, and is marked Petitioner's Exhibit No. 4.)

TREASURY DEPARTMENT,
March 25, 1886.

U. S. SHIPPING COMMISSIONER,
187 *Cherry Street, New York.*

SIR: Your letter of the 23rd instant is received, stating that you
105 have been notified to quit the building now occupied by the U. S. shipping commissioner's office.

It appears that the premises for which you have paid a rent of $1,200.00 per annum have been let to another party at the rate of $7,000.00 per annum; and you report the most suitable building you can find in their place is No. 180 Cherry street, which can be obtained for the same rental as that you now pay.

In reply to your request for instructions, you are informed that, in accordance with the recommendation in your communication, you may take the premises last mentioned, to wit, No. 180 Cherry
106 36 street, for the business of your office, at a rent not to exceed $100.00 per month, payable from fees as provided for by law, if after due investigation you shall be satisfied that the amount charged is reasonable, and as low as will be accepted.

Respectfully, yours, C. S. FAIRCHILD,
Acting Secretary.

Q. When and where did you move the office of the United States shipping commissioner from 187 Cherry street?

A. I could not find any other suitable quarters for any such rent,
107 and remained at 187 Cherry street for a short time, until the 20th day of May, 1886, when by the direction of the Secretary of the Treasury I moved the office and office effects to the United States Barge Office, foot of Whitehall street, in the city of New York, where quarters had been fitted up for me as shipping commissioner by the U. S. Government at its own expense.

Q. By whom were the expenses of this removal from 187 Cherry street to the Barge Office paid?

A. They were paid by the United States. I made up a bill amounting in the aggregate to $292, and sent the same to the Secretary of the Treasury and received back a warrant in payment therefor, and I now produce the bill referred to.

108 (Counsel for petitioner now offers in evidence bill referred to by witness, and it is marked Petitioner's Exhibit No. 5.)

[Bill.]

OFFICE OF THE U. S. SHIPPING COMMISSIONER,
BARGE OFFICE BUILDING,
New York City, June 18th, 1886.

The United States, to James C. Reed, Dr.

To expenses of removing safes, furniture, office fixtures, effects
37 of deceased sailors, records, documents, etc., appertaining 109
to the office of the U. S. shipping commissioner, from No.
187 Cherry street to the U. S. Barge Office building, as follows:

Moving two safes	$40.00
Cartage, 18 loads, at $4.00	72.00
Carpenters' work in removing and replacing fixtures	180.00
(Two hundred and ninety-two dollars.)	$292.00

Received payment.

JAMES C. REED,
U. S. Shipping Commissioner, Port of New York. 110

I hereby certify that the above account is correct.

JAMES C. REED,
U. S. Shipping Commissioner, Port of New York.
JUNE 18th, 1886.

Q. Where were the offices of the United States shipping commissioner for the port of New York between the 20th day of May, 1886, and the 10th day of April, 1890?

A. In the U. S. Barge Office building, Battery Park, New York City, a building owned by the United States. 111

Q. Was any charge or rent paid by you for the use of the offices in the Barge Office during the time of your occupancy thereof?

A. No.

Q. Was there any deduction made from your compensation of $5,000 on account of the rent of that portion of the Barge Office occupied by you as United States shipping commissioner during the period of time between the 20th day of May, 1886, and the 10th day of April, 1890, while you occupied the same as United States shipping commissioner?

38 A. No; no deduction was made and no demand for rental 112
thereof was made by any person, and no intimation was given me that I was chargeable in any way for the rental value of so much of the premises at the Barge Office occupied by me in the discharge of my duties as shipping commissioner.

Q. Have you a letter of the Secretary of the Treasury in relation to repairs to the office occupied by you as shipping commissioner?

A. I have, and now produce the same.

(Petitioner's counsel here offers in evidence letter dated Washington, D. C., February 18th, 1888, from the Secretary of the Treasury, and 113 the same is marked Petitioner's Exhibit No. 6.)

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., February 18th, 1888.

Mr. HANS S. BEATTIE,
Custodian Barge Office, New York, N. Y.

SIR: You are advised that Mr. Wm. J. Fryer, jr., superintendent of repairs, has this day been authorized to incur an expenditure not
114 exceeding forty dollars ($40.00) for repairing stoves in the office of the U. S. shipping commissioner, in the building in your custody. Mr. Fryer will submit, through you, vouchers in duplicate for this expense, made payable from the appropriation for repairs to heating apparatus for public buildings, 1888.

Respectfully, yours
(Signed) I. S. MAYNARD,
Assistant Secretary.
L. FERRET.

115 39 Q. Prior to the 1st day of July, 1886, state, if you know, by whom the salaries of your deputies and clerical assistants, the cost of fixtures, repairs, rent, and the disbursements incident to the discharge of your duties as shipping commissioner were paid.

A. By the Government of the United States.

Q. When was it that a change was made in this regard, if at any time?

A. Not until after July 1st, 1886, when the act of June 19th, 1886, went into effect.

Q. By whom was the fuel consumed in your office while you occupied the premises at the Barge Office furnished?

116 A. By the Government of the United States, who also provided a man to keep the fires going all night, which man was not on my pay roll.

Q. For how long a time did you maintain your office of United States shipping commissioner in the Barge Office building in the city of New York?

A. Until the 10th day of April, 1890.

Q. By whose direction did you move from such Barge Office?

A. By the direction of the U. S. Treasury and the custodian of the U. S. buildings in the city of New York.

Q. Did you or did you not procure other quarters for the discharge of your duties as United States shipping commissioner; if so, where, and by whose direction?

117 A. I did procure other quarters—at No. 25 Pearl street, for office room, and at No. 19 Pearl street, for the storage of deceased seamen's effects. I did so by the direction of the Secretary of the Treasury of the United States of America.

Q. How was such direction or instruction received by you?

A. By letter and telegram from the Secretary of the Treasury and Joel B. Erhardt, custodian of United States buildings in the city of New York, and I now produce the same.

118 40 (Counsel for petitioner now offers in evidence telegram of George S. Batcheller, dated April 3d, 1890, marked Petitioner's Exhibit No. 7.)

WASHINGTON, D. C., *April 3d*, 1890.

To J. C. REED,
Shipping Commissioner, Barge Office, New York:

Custodian directed to notify you to vacate your quarters on or before the 5th instant. Please comply with this request.

GEORGE S. BATCHELLER,
Acting Secretary. 119

(Petitioner's counsel also offers in evidence letter of Joel B. Erhardt, custodian, dated April 4th, 1890, which is marked Petitioner's Exhibit No. 8.)

U. S. BARGE OFFICE BUILDING,
OFFICE OF CUSTODIAN,
New York, April 4th, 1890.

JAMES C. REED, Esq.,
U. S. Shipping Commissioner.

SIR: I am directed by the Department to inform you that the 120
space in this building now occupied by you must be vacated on or before the 5th instant, it having been allotted to the use of the commissioner of immigration.

Respectfully, yours,

JOEL B. ERHARDT,
Custodian.

41 (Petitioner's counsel also offers in evidence telegram of James 121
C. Reed, United States shipping commissioner at the port of New York, to the Secretary of the Treasury, dated April 4th, 1890, which is marked Petitioner's Exhibit No. 9.)

[Telegram.]

APRIL 4TH, 1890.

To the SECRETARY OF THE TREASURY,
Washington:

Telegram received regarding vacating Barge Office annex to-morrow. The requirement of instant possession necessarily restricts 122
choice of new quarters for shipping commissioner's office to premises now unoccupied and to places not the most suitable.

The area of the present office is about three thousand square feet, which, at times, has proved somewhat inadequate and overcrowded. No area of like dimensions on one floor is obtainable at this juncture in the commercial part of this city.

I am offered the third and fourth floors of the building No. 25 Pearl street for twelve hundred dollars per annum, with immediate possession and option to renew for two or three years.

These quarters, especially because of their being upstairs, are not altogether suitable, but there are none better adapted now vacant, and 123
they can be made to serve the purpose sufficiently well. I believe I have inspected every vacant room south of Fulton street, and can say that no other premises approximately suitable are now obtainable.

During the past three days we have shipped at this office ninety-eight seamen and paid off two hundred and seventy-four, which trans-

actions, when the congregating of sailor landlords, slop dealers, and others is included, has given us a daily attendance of about two hundred persons. This makes the shipping commissioner, to those
124 42 who know the character of his business, an undesirable tenant; and I therefore recommend that authority be telegraphed me to-day to execute a lease of the premises mentioned.

The additional conditions are that the tenant may make such interior improvements, alterations, subdivisions, as he pleases, including water-closets and inside stairs, but shall restore the premises to their present condition, if required by the owner, upon vacating.

The premises mentioned will not accommodate the effects of deceased seamen, of which there are now in my custody some six hundred
125 pieces of baggage; but it may be assumed that a suitable storeroom, conveniently adjacent, may be rented for about four or five hundred dollars. If an enclosed space, about forty feet square, could be had in the basement of the Army Building, which is directly opposite, this expenditure could be avoided.

It is not probable that any premises can be leased for less than one year.

Assuming that authority is telegraphed me to sign lease, please inform me by what method the removal of the safes, desks, records, sailor's effects, etc., shall be arranged for.

The commissioner of immigration informs me that he would prefer
126 not to have removed the stoves, the subdividing partitions, the railings and some of the fixed desks, none of which, however, are well adapted to the changed conditions of the new premises.

Please instruct me similarly concerning the partitions, fittings, etc., of the new office.

If this telegram can be answered immediately, the shipping commissioner's office will be removed to-morrow.

JAMES C. REED,
Commissioner.

127 43 (Petitioner's counsel offers in evidence telegram of Mr. Windom, Secretary of the Treasury, dated April 5th, 1890, and which is marked Petitioner's Exhibit No. 10.)

WASHINGTON, D. C., *April 5th*, 1890.

U. S. SHIPPING COMMISSIONER,
New York:

Barge Office will probably be occupied for emigration purposes temporarily only. The Pearl street quarters may be secured as suggested
128 in your telegram of yesterday, and, if practicable, arrangements may be made for storing seamen's baggage in basement Army building opposite. All expenses, removal, rent, alterations, repairs, etc., must be borne by you, no appropriation by Congress being available, so far as Department can ascertain.

W. WINDOM, *Secretary.*

Q. Pursuant to these directions and instructions contained in these letters and telegrams, what did you do?

A. I sought for other quarters suitable for the office of the shipping commissioner, and as leases in the city of New York usually 129
begin on the 1st of May on rentals made in February, there were but few suitable places vacant, and it was only because of the sudden removal of the tenants from No. 25 Pearl street that I was enabled to procure same. As a matter of fact, there were at that time, April, 1890, but two suitable places where the shipping commissioner's office could be located. One of them was at No. 40 Broad street, the floor space of which is much less than theretofore occupied at the Barge Office, the rental of which was $3,000 per annum, and the other at 25 Pearl street, on the second and third floors, of still
44 smaller dimensions, in very bad order, however, which you 130
had to repair, the rent of which was $1,200 per year. The fact that the rent of the first-named place was so much in excess of the rent that had been paid for the Cherry street building, I was necessarily limited to and obliged to rent the premises at No. 25 Pearl street. The Secretary suggested that storage room for the effects of deceased seamen might be found in the U. S. Army building, but this was found to be impracticable, because the whole of that building was necessarily used by the quartermaster's and engineer's departments of the Army, and I was, therefore, obliged to, and did, rent quarters at No. 19 Pearl street, at an annual rental of $300 per 131
annum. I reported to the Secretary of the Treasury at once that I had leased the premises No. 25 Pearl street and No. 19 Pearl street, stating fully the character thereof and the rental to be paid. I have continued to occupy said premises ever since, and now occupy the same with the full knowledge of the Treasury Department of the United States.

Q. Are the premises at No. 25 Pearl street and No. 19 Pearl street any larger than the necessities of your office require?

A. No, sir; they are much too small, especially as the documents to be filed and preserved increase so rapidly.

Q. Have you continued to pay the rental for the premises No. 25 132
Pearl street and the premises No. 19 Pearl street since the 1st day of March, 1891, down to the present time?

A. I have; at and after the rate of $1,200 a year for No. 25 Pearl street, and $300 a year for No. 19 Pearl street.

Q. State why it is that you are charged with the cost of the care of deceased seamen's effects?

A. The statute of 1872 requires the circuit court to take charge of deceased seamen's effects, and when I assumed the duties of shipping commissioner the circuit court refused to receive such effects, and compelled me to take charge thereof, and I have done so ever since.

45 Q. Have you not documents in your possession showing 133
the supervision of the circuit court over these deceased seamen's effects?

A. I have, and now produce the same.

(Petitioner's counsel here offers in evidence two letters and a blank receipt. The letters are dated April 24th, 1890, signed by John A. Shields, clerk of the circuit court, which is marked Petitioner's Exhibit No. 11.)

[Clerk's office, United States circuit court, U. S. court-house & post-office building, room 82, third floor. P. O. box 419. John A. Shields, clerk.]

NEW YORK, *April 24th*, 1890.

SIR: In the matter of Anton Gulbrand, a deceased seaman, late of the brig "Britannia," an order was entered April 23d, 1890, for payment of wages and delivery of effects to Julius Gilbertson, attorney for Andrine Gulbrand (mother), 76 Charlton st., city.

Very respectfully,

JOHN A. SHIELDS, *Clerk.*

HON. JAMES C. REED,
U. S. Shipping Commissioner, New York City.

46 [Clerk's office, United States circuit court, U. S. court-house & P. O. building, room 82, third floor. P. O. box 419. John A. Shields, clerk.]

In the matter of Anton Gulbrand, a deceased seaman, late of the "Britannia."

NEW YORK, *April* 24, 1890.

SIR: Inclosed herewith you will find a check to your order on the Central National Bank, of the city of New York, for the sum of eight 91/100 dollars ($8 91/100), said amount being the balance of wages due above-named deceased seaman, and paid you, by order of court, as attorney for mother and next of kin.

Please sign and return the inclosed receipt.

If the deceased left any effects (clothing, etc.), application should be made to U. S. shipping commissioner, who may be addressed at 25 Pearl street, New York City.

Very respectfully,

JOHN A. SHIELDS, *Clerk.*

To Mr. JULIUS GILBERTSEN,
76 Charlton St., City.

47 Trunks. One bag. Boxes. Bundles. Chests. Pictures. Charts. Boots. Quadrants. Books. Watches. Letters. Trinkets.

OFFICE OF THE
UNITED STATES SHIPPING COMMISSIONER,
New York City, April 26, 1890.

Received of James C. Reed, United States shipping commissioner at the port of New York, one piece, as per margin, being the effects of Anton Gulbrand, deceased seaman, late of the brig "Britannia," delivered by order of the United States circuit court, entered April 24, 1890.

JULIUS GILBERTSEN.

No.

Q. Have you a letter addressed to the Secretary of the Treasury in relation to the payment of the rental of the premises at No. 25 Pearl street and No. 19 Pearl street, and his answer thereto?

A. I have, and now produce the same.

(Counsel for petitioner offers in evidence letter dated September 23d, 1890, and the same is marked Petitioner's Exhibit No. 12.)

OFFICE OF THE 141
UNITED STATES SHIPPING COMMISSIONER,
No. 25 Pearl Street, New York City, September 23, 1890.

The SECRETARY OF THE TREASURY,
Washington.

SIR: The first section of the act of Congress approved June 19th, 1886, which took effect July 1st, 1886, and abolished the collection of fees by the shipping commissioners for services rendered in
48 shipping and discharging seamen for our merchant vessels, pro- 142
vided that "the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, said officers such compensation for such services as each would have received prior to the passage of this act."

Prior to the passage of said act, viz, from July 1st, 1884, until July 1st, 1886, the first item charged against the fee earnings of this office in each monthly account prescribed by the Treasury Department was the sum of one hundred dollars for the monthly rental of the premises wherein the public business of the shipping commissioner was conducted.

In May, 1886, the office of the shipping commissioner was removed 143
from the premises which it then occupied at No. 187 Cherry street (by reason of the expiration of the lease and the sale of the building to the city for a public school) to the annex of the U. S. Barge Office building.

In April, 1890, the office of the shipping commissioner was removed from those premises (by reason of their being needed by the Treasury Department for the landing of immigrants) to the quarters which it now occupies at No. 25 Pearl street.

Since the date of its last removal, since it has again occupied a private building, and since it has resumed the paying of a monthly 144
rental of one hundred dollars therefor, the item of rent so paid has not been stated in the monthly accounts as a charge against the nominal earnings of the office of the shipping commissioner (although said earnings since that date have exceeded the expenses by some twenty-seven hundred dollars), because it has been stated that no appropriation had been made to meet such expenditure.

I beg leave to suggest that it is possible that no provision for meeting the expenses of the offices of shipping commissioner was deemed necessary in the law which abolished their fees, because it
49 permitted the Secretary of the Treasury to reimburse them 145
for such expenditures.

The monthly compensation of the shipping commissioner at New York, prior to the passage of the act of June 19th, 1886, was one hundred dollars larger than it has been since the 10th of April, 1890, because, since that date, he has paid that sum each month as rent of the offices of the shipping commissioner, and has not charged it against the monthly earnings of that office, as he was allowed to do prior to the passage of said act.

In other words, the monthly compensation he would have received prior to the passage of the act of June 19th, 1886, is one hundred dollars more than he now receives. 146

The act of June 18th, 1886 (as already quoted), prescribed that the Secretary of the Treasury shall allow and pay said officers such compensation as each would have received prior to the passage of said act.

I have, therefore, respectfully to request that the practice which obtained prior to the passage of the act of June 19th, 1886 (viz, from July 1st, 1884, to July 1st, 1886, when said act became operative), be resumed, and that an authorization be given me to charge in the next monthly account of this office, as the first item, the sum of one hundred dollars, disbursed in payment of the rent of the
147 office of the shipping commissioner, for the month of September, 1890.

Respectfully, yours,

JAMES C. REED,
United States Shipping Commissioner.

148 50 (Petitioner's counsel also offers in evidence letter from the Treasury Department, dated September 27, 1890, to the United States shipping commissioner, which is marked Petitioner's Exhibit No. 13.)

TREASURY DEPARTMENT,
Washington, D. C., September 27, 1890.

U. S. SHIPPING COMMISSIONER,
New York, N. Y.

149 SIR: This Department is in receipt of your letter, dated the 23d instant, requesting permission to charge in your accounts the sum of one hundred dollars ($100.00), disbursed each month by you in payment of the rent of your office.

You are informed that, so far as this Department is aware, there is no appropriation from which the expense could be allowed. It has been uniformly held heretofore by the Department, that no amount could be paid to shipping commissioners for services in excess of the sum specified in chapter 6, Title LIII, of the Revised Statutes.

Respectfully, yours,

O. L. SPAULDING,
Assistant Secretary.

150 Q. Did you have any correspondence with the Secretary of the Treasury in relation to the heating of your office at No. 25 Pearl street?

A. Yes, sir; and I now produce letter sent to the Secretary of the Treasury and his answer thereto.

151 51 (Petitioner's counsel now offers in evidence letter dated October 8th, 1890, which is marked Petitioner's Exhibit, No. 14.)

OFFICE OF THE
UNITED STATES SHIPPING COMMISSIONER,
No. 25 Pearl Street, New York, October 8th, 1890.

THE SECRETARY OF THE TREASURY,
Washington.

SIR: I have the honor to request that suitable provision be made for the heating of this office at an early day.

As its present location is less exposed than were the quarters which 152
it occupied last winter, a smaller number of stoves and a lesser quantity of fuel will be required. Six stoves and twenty tons of coal will probably be adequate for the purpose.

Yours, respectfully,

JAMES C. REED,
United States Shipping Commissioner.

(Petitioner's counsel also offers in evidence letter from the Treasury Department, dated October 11th, 1890, and which is marked Petitioner's Exhibit No. 15.)

TREASURY DEPARTMENT,
Washington, D. C., October 11, 1890. 153

U. S. SHIPPING COMMISSIONER,
New York.

SIR: Referring to your letter of the 8th instant, this Department has to state that it is not aware of any appropriation under which the expense of heating you mention can be paid.

Any further statement you may desire to make upon the subject will receive full consideration.

Respectfully, yours,

O. L. SPAULDING,
Assistant Secretary.

52 (Petitioner's counsel also offers in evidence letter of Octo- 154
ber 15th, 1890, from the United States shipping commissioner to the Secretary of the Treasury, which is marked Petitioner's Exhibit No. 16.)

OFFICE OF THE
UNITED STATES SHIPPING COMMISSIONER,
New York City, October 15th, 1890.

THE SECRETARY OF THE TREASURY,
Washington.

SIR: I have to acknowledge the receipt of your communication (T. B. S.) of the eleventh instant, in answer to mine of the eighth 155
instant, wherein I had requested that suitable provision be made for the heating of this office during the coming season, in which you state that the Department is not aware of any appropriation under which the expense of such heating can be paid, and that any further statement I "may desire to make upon the subject will receive full consideration."

In support of the proposition that such expenses, the cost of heating the office in which the shipping commissioner conducts the public business, should not be a charge upon the personal resources, I do not know that I can say anything beyond the argument offered in my communication of September 23d, 1890, with respect to the payment 156
of the rental of such office.

In that communication I requested authority to charge in my monthly account for September, 1890, against the surplus earnings of this office (as had been the practice prior to the passage of the

act of June 19th, 1886), the sum of one hundred dollars, paid by me for the rent of the office of the shipping commissioner at the port of New York, for that month, for the reason that said act, which abolished the collecting of fees, provided that "the Secretary of the Treasury shall allow and pay (to shipping commissioners), from any
157 53 money in the Treasury not otherwise appropriated, said officers such compensation as each would have received prior to the passage of said act," and for the further reason (to take that one example) that the compensation of the shipping commissioner at the port of New York, for the month of September, 1890, unless he was authorized to include such disbursements as a charge in such monthly account (and was reimbursed accordingly), would evidently be one hundred dollars less than the compensation he "would have received prior to the passage" of the act of June 19th, 1886, under the practice which at that time obtained.

In answer to that communication the Department, under the date
158 of September 27th, informed me that there was no appropriation from which such an expenditure could be reimbursed.

With all due respect, I beg leave to renew my suggestion that it is not a question of appropriations. As I ventured to suggest in my communication of September 23d, "it is possible that no provision for meeting the expenses of the offices of the shipping commissioners was deemed necessary in the law (the act of June 19th, 1886), which abolished their fees, because it permitted the Secretary of the Treasury to reimburse them for such expenditures," in this: It authorized
159 and required him to pay them such compensation as each would have received prior to the passage of the act of June 19th, 1886.

The statutory compensation due me for services as shipping commissioner since January 1st, 1890 (to October 1st), is $3,750.

But since that date (to October 1st), for the necessary expenses of that office, I have made from my own private resources the following disbursements:

160 54	Stationery	$143.70
	Telephone	37.50
	Maritime Register subscription	25.00
	Freight on blanks from Department	2.24
	Ice	17.20
	Telegrams	4.88
	Repairs to furniture	6.00
	Moving from U. S. Barge Office	216.00
	Fitting up offices, 25 Pearl street	751.58
	Rent of room for seamen's effects	141.66
	Rent of offices, 25 Pearl street	576.66
		$1,922.62

161 It is therefore evident that the compensation which I received for my services as shipping commissioner during the past nine months instead of being $3,750 has been $1,827.38.

To reduce this condition of things to an absurdity, it seems only necessary to contemplate what would have been the result but for the

rare good luck that enabled me to secure, last April, a lease of the two floors now occupied by this office at No. 25 Pearl street, at a rental of $1,200 per annum.

The only other suitable premises vacant and to be had at that time, in the proper locality, were at No. 5 State street, for which a rental of $3,000 per annum would have had to be paid. 162

Consequently, but for the mere accident that No. 25 Pearl street had been suddenly vacated (out of the renting season), I should have been constrained to have leased the premises at $3,000 per annum which would have reduced the net compensation for my services for the past nine months to the magnificent aggregate of $477.38.

To produce this illustration further, and yet not to exceed the limit of possibility, if I had been compelled to pay a rental of $4,000 per annum for suitable quarters for the office of the shipping
55 commissioner (and certainly, on one floor no such space as was 163 assigned him in the U. S. Barge Office building, which was inadequate, however, could be had for less), then for the past nine months I would have received no compensation whatever for my services, but, on the contrary, should have had to pay $272.62 from my own pocket for the honor of being shipping commissioner at the port of New York.

Of course the existing condition of things in the matter discussed is manifestly unfair to a public official, and I have no doubt but what the Department so regards it.

But I think it should not be permitted to continue longer, if any way can be found to solve the situation, if for no other reason than 164 that the United States should, for an example, own the fixtures of this office, or the necessary heating apparatus, if I should see fit to buy six stoves with my own money for the use of the office of the U. S. shipping commissioner.

In view of the position of the Department upon the questions involved in this matter, it seems to me that the readiest and most conclusive determination of them might be reached by a friendly suit by the shipping commissioner against the United States for the amount of his disbursements for the expenses of his office.

I am ready to bring such an action, but I should question the 165 official propriety of my so doing without some intimation that such a course on my part would not, at least, have the disapproval of the Secretary of the Treasury.

Yours, respectfully, JAMES C. REED,
United States Shipping Commissioner.

56 (Petitioner's counsel also offers in evidence letter from the 166 Treasury Department, dated October 18, 1890, which is marked Petitioner's Exhibit No. 18.)

TREASURY DEPARTMENT,
Washington, D. C., October 18, 1890.

U. S. SHIPPING COMMISSIONER,
New York, N. Y.

SIR: Referring to your letter of the 15th instant, this Department has to state that it is still of the opinion that there is no authority of

167 law for the payment by the United States of the expenses of heating, &c., in your office.

Concerning your suggestion that the readiest determination of the question you raise might be reached by a friendly suit brought by you against the United States for the amount of your disbursements, the Department has to state that the matter is left to your discretion, and that it will interpose no obstacle to such a suit. An effort was made to have the law amended so as to include necessary expenses such as you mention, but without avail. It is probable that it may be considered expedient and proper to renew the recommendation formerly made in regard to the matter.

168 Respectfully, yours, W. WINDOM,

Secretary of the Treasury.

S.

Q. Have you in your possession a copy of the House of Representatives bill No. 13658, known as the general deficiency bill of 1891?

A. Yes; I have, and now produce the same.

(Counsel for petitioner now offers so much of that bill as shows
169 57 the amendment made by the U. S. Senate, found on page 17, referring to the expenses of offices of shipping commissioners, which reads as follows:)

"To reimburse the shipping commissioner at New York for his expenditures for office fixtures, books, and stationery, heating apparatus and fuel, telephone service, office rent, and other expenses connected with the administration of his office from the first day of July, eighteen hundred and eighty-six (at which time the provision for the payment thereof by the Treasury Department was omitted in the act of June 19th, 1886), to the first day of July, eighteen hundred and ninety-one, five thousand dollars; and also the further sum of two
170 thousand five hundred dollars, or so much thereof as may be necessary, for similar expenses that may have been or may be incurred by shipping commissioners at other ports during said period, such expenditures to be audited and such reimbursements to be made under the direction of the Secretary of the Treasury; in all, seven thousand five hundred dollars."

Q. Can you state why so large a sum as $5,000 was recommended by the Senate for the reimbursement of the shipping commissioner of New York, when only $2,500 was recommended for the reimbursement of all the other shipping commissioners in the United States?

171 A. Yes; because the magnitude of the business at the port of New York, as compared with the business of all the other ports, excepting San Francisco, is so large. I have only at hand the statistics of the year 1888, and take the shipments of seamen for an example. Out of the total of 44,705 seamen engaged during the fiscal year ending June 30th, 1888, 14,191 of them were shipped at New York, and 23,414 of them shipped at eighteen other ports where there are shipping commissioners, and 7,110 were shipped at San Francisco. The shipping commissioner at San Francisco occupies quarters in
172 58 the appraiser's building of the United States, and consequently is furnished with offices, fuel, lights, etc., at the cost of the United States.

Q. Have you any data in your possession which will show you what, if any, increase in the business since your predecessor was removed?

A. Yes; I have.

Q. State what was the total number of crews engaged by your predecessor in 1881, 1882, and 1883?

A. 1,966.

Q. State the total number of crews engaged by you as United States shipping commissioner during the years 1887, 1888, and 1889.

A. 6,092.

Q. What is the cause of this increase, and is it still maintained? 173

A. Yes; it is still maintained. The reason of it is that by the act of 1886, which abolished the charges for shipping and discharging crews, there was brought to the office of the shipping commissioner a large number of American vessels which by law are not required to go before the commissioner for the purpose of engaging their crews.

Q. Has the work incident to the discharge of the duties of your office increased so as to require the assistance of additional deputies?

A. It has, for the reason that under the act of Congress which recently went into effect, providing for the subsidy of steam vessels carrying the United States mail, it was prescribed that a certain por- 174
tion of their crew should be American citizens, and they should carry a certain number of apprentices. This act has and will continue to throw upon the office of the shipping commissioner a larger burden of work, necessitating the employment of additional deputies and clerks, but without increasing the aggregate value of the service fees.

59 (Petitioner's counsel now offers in evidence the petitioner's 175
report, dated July 10, 1888, which is marked Petitioner's Exhibit No. 22.)

OFFICE OF THE U. S. SHIPPING COMMISSIONER,
New York City, July 10th, 1888.

One.

Number of seamen reshipped without charge..... 3,746

Two. 176

Number of vessels for which crews were engaged..... 1,994
Number of seamen engaged 14,191

* * * * * * *

Six.

Number of crews paid off, for which half fee was charged..... 55
Number of seamen paid off and discharged therefrom..... 434

Seven.

Number of crews paid off, for which full fee was charged..... 432 177
Number of seamen paid off and discharged therefrom..... 9,521

Q. If you know, state what was the net surplus of service fees after the payment of all salaries, including your own, and the expenses incident to the proper conduct of the office and the discharge of the duties thereof, including rent, between the 1st day of March, 1891, and the 1st day of April, 1893.

A. $14,551.29.

178 60 Q. During that period of time, what compensation did you receive?

A. At and after the rate of $5,000 per year, made up as follows: $4,000 as fixed by the Secretary of the Treasury, and one-half of the surplus of the service fees, not exceeding the sum of $1,000 per annum.

Q. Are you acquainted with the rental values of premises in the neighborhood of 19 and 25 Pearl street?

A. I am.

Q. In your opinion, is the sum of $1,500 a reasonable and fair rental charge for the premises occupied by you as United States shipping commissioner at Nos. 19 and 25 Pearl street?

179 A. It is not only a reasonable charge, but are excessively low, so low, in fact, that the landlord of 25 Pearl street has notified me that he proposes to increase the rent after May first next.

The reference stands adjourned until 12 o'clock, August 9th, 1893.

180

181 61 United States circuit court for the southern district of New York.

JAMES C. REED, PETITIONER,
versus
THE UNITED STATES OF AMERICA, DEFENDANT.

182 AUGUST 9TH, 1893.

Met pursuant to an adjournment.

Present: John A. Shields, referee; G. E. P. Howard, attorney for petitioner; Charles D. Baker, assistant United States attorney, for the United States.

JOEL B. ERHARDT, a witness produced on the part of the petitioner, having been duly sworn by the referee, testifies:

183 Q. What is your full name?

A. Joel B. Erhardt.

Q. Are you of full age?

A. Yes; I am.

Q. Where do you reside?

A. New York City.

Q. Were you at one time an official of the Government of the United States?

A. Yes; I have been.

Q. What offices have you held, since 1880, under the Government of the United States?

A. I have been U. S. marshal for the southern district of New York, also collector of the port of New York.

62 Q. Were you at one time custodian of a portion of the buildings of the United States located in the city of New York, and as such custodian did you have charge of the Barge Office in the city of New York? 184

A. Yes, sir.

Q. Were you at one time instructed by the Secretary of the Treasury to evict the United States shipping commissioner of this port, James C. Reed, the petitioner herein, from a portion of the Barge Office premises?

A. I did receive such orders, and I did so evict him.

Q. What, if any, time did you give the shipping commissioner in which to remove the shipping commissioner's effects from the Barge Office in 1890? 185

A. I think the orders from the Department were imperative; I gave him no time.

Q. You directed him to vacate at once?

A. I did.

Q. And did he vacate at once?

A. He did.

Q. Have you at any time seen the offices which were and are now occupied by the United States shipping commissioner at No. 25 Pearl street, in the city of New York?

A. I have seen the offices; they are on the corner of Whitehall and Pearl streets, and are now occupied by the shipping commissioner, and to which he removed after I evicted him from the Barge Office.

Q. Are you acquainted generally with the rental values of quarters similar to those occupied by the shipping commissioner at No. 25 Pearl street? 186

A. I have a general idea of what such quarters are worth.

Q. In your opinion, would $1,200 a year be a reasonable and fair rental for those quarters?

A. I think it is a very reasonable sum.

Q. From your experience as collector of the port of New York, can you state why it is necessary for the shipping commissioner at this port to have office rooms similar to those now occupied at No. 25 Pearl street?

A. I can, and in my opinion it is necessary for him to have quarters—good sized quarters.

63 Q. And, in your opinion, are the quarters occupied by the United States shipping commissioner at No. 25 Pearl street more than are adequate and necessary for the discharge of the business imposed upon the commissioner by law? 187

A. No; they are not more than adequate.

No cross-examination.

Reference adjourned to Monday, August 14th, 1893, at 12 o'clock.

Met pursuant to adjournment this 14th day of August, 1893. 188

Appearances as before.

The petitioner, having no further evidence, rested.

The United States offered no evidence, and the case was thereupon closed.

Signatures of witnesses to their evidence was waived.

G. E. P. HOWARD,
189 *Atty. for Petitioner.*
EDWARD MITCHELL,
U. S. Attorney for Deft.

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed vs. The United States. Testimony on reference. U. S. circuit court. Filed Aug. 26, 1893. John A. Shields, clerk.

190 64 United States circuit court for the southern district of New York.

JAMES C. REED, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT.

191 *Report of John A. Shields, referee.*

Pursuant to the requirements of the order heretofore made in this case, I have the honor to submit herewith the following report:

This action was brought by the petitioner, James C. Reed, against the Government of the United States for the purpose of recovering the sum of thirty-one hundred and twenty-five dollars ($3,125.00), the amount paid by him for office room and storage place in which to discharge the duties imposed upon him as shipping commissioner by the United States of America.

192 The period of time covered in the petition for which rental was paid by the petitioner is from the 1st day of March, 1891, to the 1st day of April, 1893.

It appears from the pleadings herein and the evidence taken before me that James C. Reed, the petitioner, was appointed United States shipping commissioner by the circuit court of the United States in May, 1884, under and pursuant to the act of Congress of June 7th, 1872.

The petitioner continued to discharge the duties of shipping commissioner at the port of New York, under this appointment
193 65 of the circuit court, until the 1st day of July, 1884, when, owing to an amendment of the act of 1872, the duty of appointing shipping commissioners devolved upon the Secretary of the Treasury, who reappointed the petitioner such shipping commissioner, and the petitioner has continued to discharge the duties of such office under such appointment down to the present time.

Under the appointment of the circuit court the petitioner was allowed for his compensation the sum of $5,000 per annum, together with the cost to him of suitable offices and storage rooms.

This practice was continued under the subsequent appointment by
194 the Secretary of the Treasury, until the act was further amended in 1886, and the offices of the commissioner were removed to the Barge Office in the city of New York (a building owned by the United States of America).

The petitioner occupied quarters in the Barge Office from the 20th day of May, 1886, until the 10th day of April, 1890, during which period of time the petitioner was allowed and paid the maximum fixed by law, to wit, the sum of $5,000 per annum, as compensation for his services as United States shipping commissioner.

During the last-mentioned period of time, while the petitioner was occupying Government property for the discharge of his duties as shipping commissioner, no charge against him or deduction from his 195
compensation was made for or on account of the use or rental of such premises.

On or about the 10th day of April, 1890, the Government, which at that time entered upon the care of immigrants arriving at this port, directed the petitioner to vacate the offices theretofore occupied by him at the Barge Office and procure room at 19 and 25 Pearl street in the city of New York, at a rental of $1,500 per annum. The petitioner at once notified the Secretary of the Treasury of the rent required for new quarters, and the same was fully acquiesced in by the Government before the petitioner moved to and took possession thereof.

66 The petitioner duly reported his disbursements on account 196
of rent, but the Department declined to audit the petitioner's claim, upon the ground that Congress had made no appropriation therefor.

It is manifest to me, after a perusal of the correspondence between the Treasury Department and Congress, that the justice of the claim of the petitioner for reimbursement of the amount paid by him for rent was fully recognized and acquiesced in. In fact, the only reason given by the Treasury Department for not paying the same was, that under their construction of the various acts in relation to United States shipping commissioners, Congress had failed to appropriate specifically 197
any monies which could be drawn upon for the payment of rent.

The Treasury Department does not question the propriety of the act of the shipping commissioner in renting the quarters at Nos. 19 and 25 Pearl street, but, on the contrary, specifically directs and authorizes him to occupy same, being fully informed of the amount or sum demanded by the owner for the use of such premises. See in this regard petitioner's Exhibit No. 1, in which the petitioner's compensation is fixed and the expenses for rent assumed by the Government, and Exhibit No. 4, the letter of the Secretary of the Treasury of March 25th, 1886, in which the petitioner is directed to procure 198
and rent an office. Also Exhibit No. 9, a letter of April 4th, 1890, written by the petitioner to the Secretary of the Treasury, acknowledging the receipt of directions to vacate the Barge Office and notifying the Treasury Department of his ability to procure other quarters at the rental thereof, and asking for authority to lease same. Also Petitioner's Exhibit No. 10, telegram of the Secretary of the Treasury to the petitioner in answer to the foregoing telegram, authorizing leasing of the premises No. 25 Pearl street.

The duties and necessities of the United States shipping
67 commissioner at this port have been before this court so often 199
that it appears to me unnecessary to discuss the question as to whether or not offices in which to discharge the duties imposed upon

the shipping commissioner and the storage of deceased seamen's effects are or are not necessary. The petitioner swears positively that the offices at 25 Pearl street and the storage room at 10 Pearl street are necessary, and that the rentals charged therefor are reasonable. On this point he is fully corroborated by the witness, Joel B. Erhardt, who, in my opinion, is thoroughly competent to express an opinion, and on this point there is no conflict of evidence.

200 It appears to me, from all of the evidence in the case, that it was the intention of Congress that the shipping commissioner at the port of New York should be provided, at the expense of the Government, with suitable quarters for the discharge of the duties imposed upon him by law, and that the cost thereof should be a charge against the Government. This view is borne out by the unvarying practice of the circuit court for this district, which annually allowed to the petitioner's predecessor the cost of the rental of his office and premises used by him for the storage of seamen's effects. The Treasury Department followed the practice of this court and allowed in the accounts of the petitioner the cost of offices occupied by him down to the time
201 when, by direction of the Secretary of the Treasury, he removed the same to the Barge Office.

It also appears in the evidence that, during the whole period of time during which the petitioner occupied the premises at the Barge Office, no charge was made by the Government of the United States for the rental thereof, nor was any deduction made therefor from the maximum sum, to wit, the sum of $5,000, allowed to the petitioner for his personal compensation.

It has been suggested to me that the petitioner was required
202 68 by the terms of the act of June 7th, 1872, (section four), to rent and procure at his own cost suitable premises for the transaction of the business of his office and for the preservation of the books and other documents connected therewith; but under the act of 1872 shipping commissioners were entitled to have and receive all the fees charged to and paid by seamen and masters of vessels for services rendered under the act of 1872 above referred to, subject only, however, to the provision that, after the payment of all necessary expenses, such as clerk hire and rent, he should retain out of the fees remaining only the maximum sum of $5,000 for his own use, paying
203 the surplus, if any, into the Treasury of the United States. The act of 1872 was amended by the act of 1884, by which Congress provided that shipping commissioners should monthly render a full, exact, and itemized account of their receipts and expenditures to the Secretary of the Treasury, who shall determine their compensation, and shall from time to time determine the number of clerks appointed by the shipping commissioner, with the approval of the Secretary of the Treasury and subject to the limitations now fixed by law.

All fees of shipping commissioners should be paid into the Treasury of the United States, and should constitute a fund to be used under
204 the direction of the Secretary of the Treasury to pay the compensation of said commissioners and their clerks, and such other expenses as he may find necessary to insure the proper administration of their duties.

Thus it will be seen that, by the amendment of 1884, commissioners were required to pay all fees into the Treasury, where they were to constitute a fund out of which the commissioners were to be paid their compensation, their expenses for clerks, and such other expenses as might be necessary to insure the proper administration of their duties.

There can be no question but that the cost of rental of
69 suitable quarters or offices and storage rooms was one of the
necessary expenses which Congress had in mind when it made 205
use of the words "such other expenses as he" (meaning the Secretary of the Treasury) "may find necessary to insure the proper administration of their" (meaning shipping commissioners) "duties."

Thus the law stood at the time of the passage of the act of June 19th, 1886, chapter 419, section 1 (24th Statutes at Large, 79 and 80), which provides as follows:

"SECTION 1. That on and after July 1st, 1886, no fees shall be charged or collected by collectors or other officers of customs, or by inspectors of steam vessels or shipping commissioners, for the following services to vessels of the United States, to wit: * * * ship- 206
ping or discharging seamen, as provided by title 53 of the Revised Statutes and section 2 of this act, * * * collectors or other officers of customs, inspectors of steam vessels and shipping commissioners who are paid wholly or partly by fees, shall make a detailed report of such services and the fees provided by law, to the Secretary of the Treasury, under such regulations as that officer may prescribe; and the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, such officers such compensation for said services as each would have received prior to the passage of this act. 207

"Also such compensation of clerks of shipping commissioners as would have been paid them had this act not passed.

"Provided that such services have, in the opinion of the Secretary of the Treasury, been necessarily rendered."

The act of 1884 required commissioners to pay the fees into the Treasury, where they were to constitute a fund for the payment of their compensation and other expenses.

70 The act of 1886 abolished the collection of fees altogether, 208
but did not change the compensation which commissioners were to receive for their services, but specifically provides that commissioners should receive "such compensation for services as each would have received prior to the passage of this act" (that is, under the act of 1884).

Under the act of 1884 the petitioner received for his compensation the sum of $5,000 per annum, and was provided with suitable premises for the discharge of the duties imposed upon him by law, or, in the words and language of the act, he was allowed $5,000 per annum for his compensation and such other expenses as were necessary to 209
insure the proper administration of his duties.

It can not be supposed that Congress meant to diminish the compensation in an amount equal to the cost of procuring proper quarters, when it makes use of such express language as is found in the act of

1886, to wit: "and the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, such officers such compensation for said services as each would have received prior to the passage of this act."

I am of the opinion that Congress meant and intended that the
210 amount allowed for compensation to the commissioner, as clerks, deputies, and runners, and the expenses which were necessary to insure the proper administration of his duties, were to be paid by the Secretary of the Treasury from any money in the Treasury not otherwise appropriated.

The Secretary of the Treasury having fixed the compensation of the petitioner under and by virtue of the authority conferred upon him by the act of 1884, the petitioner is entitled to have and receive the compensation so fixed until the same is changed or modified by the act of the Secretary of the Treasury and accepted by the
211 71 petitioner. The act of 1886 does not change or modify the compensation to be paid to and received by the petitioner, and it can not be held that this compensation for services as commissioner should be reduced to the extent of the cost to him of his quarters as such commissioner—by a reference to the act of 1872, heretofore referred to—for the reason that under the act of 1872 the commissioner held all fees earned subject to the payment of his compensation of $5,000 a year and all other expenses of his office, including that of rent. It would be unreasonable to hold that the Secretary of the Treasury, having fixed the compensation of the commissioner at
212 $5,000 a year, intended that the petitioner should be liable for the cost of his offices and storage room, which in itself was an unknown and varying quantity and might result in the commissioner being required to render his services to the Government without receiving any compensation therefor whatever.

No change has been made in the compensation to be allowed and paid to the petitioner as such shipping commissioner at the port of New York since the same was fixed by the Secretary of the Treasury under the act of 1884.

The fees of the office have largely exceeded expense necessary for the proper administration of the shipping commissioner's duties.

213 Had the petitioner refused to comply with the direction of the Secretary of the Treasury, to procure suitable quarters for the discharge of the duties imposed upon him by law, the business of the shipping commissioner at this port would have come to a standstill in April, 1890, but relying upon the good faith of the Government in fixing his compensation at $5,000 per year, he did procure, and out of his own pocket has maintained, an office in the city of New York since April, 1890, at which the business imposed upon the shipping commissioner by law has been discharged. No part of the expenses
214 72 incident to the maintenance of this office has been repaid to the petitioner.

The question as to whether or not the cost of maintaining an office was to be paid out of the commissioner's compensation is fully discussed by the circuit judge for this district, and finally disposed of in

an opinion which the learned judge held that such an expense was not to be paid out of the salary or emoluments of the commissioners. (See 13th of Blatchford, 339.)

A similar principle of law is laid down in the case of Andrews against the United States, in which the learned judge held that expenses of a similar character were incident to the office and should be allowed as proper charges against the United States. (See 2d 215
Story's Reports, pages 202 to 211.)

No question is made by the accounting officers of the Government that the sundry sums sought to be recovered by the petitioner were not actually disbursed, and were so disbursed for necessary expenses incident to the conduct of his office and to insure the proper administration of his duties; but, on the contrary, the Secretary of the Treasury urges upon Congress the duty of providing for the payment thereof by means of a suitable appropriation in the deficiency bill.

After a careful consideration of all the evidence submitted, and the various statutes bearing upon the duties of the petitioner as United 216
States shipping commissioner at this port, I am of the opinion that the disbursements made by him for rent of offices and storage room, between the 1st day of March, 1890, and the 1st day of April, 1893, amounting in the aggregate to thirty-one hundred and twenty-five dollars ($3,125.00) are necessary expenses incurred by the petitioner for the proper conduct of the public business imposed upon him by Congress, was necessarily made by the petitioner to insure the proper administration of his duties, and is a proper charge against the United States of America, the defendant herein.

73 All of which is respectfully reported. 217
New York, August 22d, 1893.

JOHN A. SHIELDS, *Referee.*

(Endorsed:) Circuit court of the United States for the southern 218
district of New York. James C. Reed vs. The United States. Report of referee. U. S. circuit court. Filed Aug. 26, 1893. John A. Shields, clerk. 219

74 Circuit court of the United States for the southern district of 220
New York.

JAMES C. REED, petitioner,
against
THE UNITED STATES OF AMERICA, defendant.
} Under act of 1887. Findings.

Findings of fact. 221

First. That the petitioner, James C. Reed, was duly appointed the shipping commissioner of the United States of America at the port of New York, and that he duly qualified and assumed and entered upon the discharge of duties of such office prior to the first day of July, 1884.

Second. That thereafter, and on or about the 26th day of August, 1884, the Secretary of the Treasury of the United States of America, under and pursuant to the direction and powers contained in the act of Congress entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign
222 carrying trade and for other purposes," approved from June 26th, A. D. 1884, determined and fixed the compensation of the petitioner as such shipping commissioner at the port of New York at the sum of four thousand dollars per annum, and in addition thereto one-half of the net surplus of the receipts of the office of such commissioner from fees earned, after the payment of salaries and expenses, not to exceed, however, the maximum sum of five thousand dollars in any one year.

Third. That the petitioner herein continued to hold said
223 75 office and to discharge the duties imposed upon him as such shipping commissioner from July 1st, A. D. 1884, to the present time.

Fourth. That during the period between July 1st, 1884, and April 1st, 1893, no change or modification in the compensation to be paid to and received by the said petitioner as such shipping commissioner was made.

Fifth. That for the fiscal year commencing March 1st, 1891, down to the 1st day of April, 1893, the surplus earnings of the office of shipping commissioner at the port of New York, of service fees, exceeded the necessary expenses incident to the conduct thereof and
224 the discharge of the duties of such shipping commissioner, including the compensation of the petitioner, by the sum of fourteen thousand five hundred and fifty-one dollars and twenty-nine cents.

Sixth. That the petitioner has been allowed and paid each year, from the 1st day of March, 1891, down to the 1st day of April, 1893, as compensation for his services as shipping commissioner at the port of New York, at the rate of five thousand dollars per annum.

Seventh. That from the 1st day of July, 1884, to the 20th day of May, 1886, the office of the petitioner, as shipping commissioner, was
225 located at No. 187 Cherry street, in the city of New York, and that the rental of said premises, together with all other expenses incident to the office and the discharge of the duties of the petitioner, were paid by the United States of America.

Eighth. That on or about the 20th day of May, 1886, the office of the petitioner was, by direction of the Secretary of the Treasury, moved from No. 187 Cherry street to the United States Barge Office, in the city of New York, a building owned by the United States.

226 76 Ninth. That the cost and expenses incident to such removal, and the fitting up of the United States Barge Office, were paid by the United States.

Tenth. That on or about the 10th day of April, 1890, the petitioner, by direction of the Secretary of the Treasury, removed from the Barge Office, and procured offices at No. 25 Pearl street, and storage room for deceased seamen's effects at No. 19 Pearl street, at an annual cost of fifteen hundred dollars.

Eleventh. That said sum was a reasonable amount for the premises occupied.

Twelfth. That between the 1st day of March, 1891, and the 1st day of April, 1893, the petitioner incurred expenses, and was obliged to and did make disbursements on account of rent of said premises, amounting in the aggregate to the sum of three thousand one hundred and twenty-five dollars, which were incident to the discharge of the duties imposed upon him by statute as such shipping commissioner, for rent of offices and storage of deceased seamen's effects.

Thirteenth. That the items for which said sum was disbursed were incident to his office.

Fourteenth. That said sum of three thousand one hundred and twenty-five dollars was a reasonable and fair charge for the same.

Fifteenth. That the defendant, the United States of America, duly authorized the occupation by the petitioner of the premises Nos. 19 and 25 Pearl street, expenditures incurred and proposed to be incurred.

Sixteenth. That the petitioner had duly demanded payment of the said sum of three thousand one hundred and twenty-five dollars of the United States, and that no part thereof has been paid.

77 *Conclusions of law.*

First. That the Secretary of the Treasury was authorized to determine the compensation of the petitioner as shipping commissioner at the port of New York, and, having exercised such authority, the compensation of the petitioner remained as so fixed (to wit, five thousand dollars per annum).

Second. That the Secretary of the Treasury is authorized to regulate the mode of conducting the business in the shipping offices.

Third. That all expenditures made by shipping commissioners in the discharge of the duties imposed upon them by the statutes of the United States or the regulations of the Treasury Department are to be audited and adjusted in the Treasury Department.

Fourth. The petitioner is entitled to have and receive from the United States of America the sum of three thousand one hundred and twenty-five dollars.

Judgment is therefore rendered for the petitioner for the sum of three thousand one hundred and twenty-five dollars, with costs to be taxed.

WM. J. WALLACE.

(Endorsed:) U. S. circuit court, southern dist. of New York. James C. Reed vs. The United States. Findings of fact. U. S. circuit court. Filed Aug. 26, 1893. John A. Shields, clerk.

78 United States circuit court for the southern district of New York.

JAMES C. REED, PETITIONER,
against
THE UNITED STATES OF AMERICA, DEFENDANT. } Postea.

The petitioner above named having filed, served, and mailed his petition herein, according to the requirements of the statute in such case made and provided, and an answer having been interposed by the

United States attorney for the southern district of New York, in behalf of the defendant herein, and the issue of law and fact thereby raised having come on regularly for trial before the court, and the court having written an opinion setting forth specific findings of fact and conclusions of law, and rendered a decision in favor of the petitioner therein for the sum of three thousand one hundred and twenty-five dollars. Now, on motion of G. E. P. Howard, attorney for the
234 petitioner, it is adjudged that the petitioner, James C. Reed, recover of the defendant, the United States of America, the sum of three thousand one hundred and twenty-five dollars.

Judgment signed this 29th day of August, A. D. 1893.

GILBERT E. ROGERS,
Deputy Clerk.

(Endorsed:) United States circuit court, southern dist. N. Y. James C. Reed, petitioner, against The U. S. of America. Judgment. G. E. P. Howard, atty. for petitioner, 35 Wall st., N. Y. City. U. S. circuit court. Filed Aug. 29, 1893, 11 a. m. John A. Shields, clerk.

235 79 United States circuit court, southern district of New York.

JAMES C. REED
agst.
THE UNITED STATES.

Please take notice that the undersigned, on behalf of the collector of the port of New York and on the part of the United States, hereby
236 appeals from the decision of this court, rendered herein and entered on the 29th day of September, 1893, to the United States circuit court of appeals for the second circuit.

Dated New York, February 8th, 1894.

Yours, &c.,

HENRY C. PLATT,
U. S. District Attorney for the Southern District of N. Y.,
Room 50, Post-Office Building, New York City.

To G. E. P. HOWARD, Esq.,
237 *Attorney for Appellee.*

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed, agst. The United States. Notice of appeal. Henry C. Platt, U. S. attorney. U. S. circuit court. Filed Feb. 9, 1894. John A. Shields, clerk.

238 80 United States circuit court, southern district of New York.

JAMES C. REED
vs.
THE UNITED STATES.

The above-named defendant and appellant hereby assigns error to
239 the decision and conclusions of law of the circuit court for the said district, in the above-entitled matter, in the following particulars:

First. The court erred in finding, as a conclusion of law, that the petitioner was entitled to receive from the United States the sum of

three thousand one hundred and twenty-five dollars over and above the sum of five thousand dollars fixed as compensation for and disbursements made by petitioner.

Second. The court erred in finding, as conclusion of law, that the petitioner was entitled to a judgment against the United States in the sum of three thousand one hundred and twenty-five dollars. 240

Third. The court erred in rendering judgment against the United States and in favor of petitioner for said sum.

HENRY C. PLATT,
United States Attorney, for the United States, Appellant.

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed versus The United States. Assignment of errors. Henry C. Platt, United States attorney, attorney for defendant. U. S. circuit court. Filed Feb. 8, 1894. John A. Shields, clerk.

81 United States circuit court of appeals for the second circuit. 241

JAMES C. REED
agst.
THE UNITED STATES.

To the United States Circuit Court of Appeals for the Second Circuit: 242

The Attorney-General of the United States hereby applies for the allowance of an appeal to the United States circuit court of appeals for the second circuit from the decision and judgment of the U. S. circuit court, rendered herein on the 29th day of September, 1893.

Dated February 8th, 1894.

RICHARD OLNEY,
Attorney-General.

The foregoing application is granted and appeal allowed. 243

Dated New York, February 8th, 1894.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

(Endorsed:) U. S. circuit court of appeals for the second circuit. James C. Reed agst. The United States. Application for and allowance of appeal. Henry C. Platt, U. S. attorney. U. S. circuit court. Filed Feb. 9, 1894. John A. Shields, clerk.

82 UNITED STATES OF AMERICA, *ss:* 244

To JAMES C. REED:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the second circuit, at the city of New York, on the 8th day of March, 1894, pursuant to an appeal on the part of the United States, filed in the clerk's office of the circuit court of the United States for the southern district of New York, in a certain suit or proceeding, entitled James C. Reed agst. The United States, to show cause, if any there be, why the decision

of the U. S. circuit court in the said appeal mentioned should not be
245 reversed, modified, or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, in the southern district of New York, on the 8th day of February, 1894.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

HENRY C. PLATT,
U. S. District Attorney, on behalf
246 *of the United States, Appellant.*

(Endorsed:) U. S. circuit court of appeals for the second circuit. James C. Reed agst. The United States. Citation. Henry C. Platt, U. S. attorney. Due service of a copy of the within citation is hereby admitted. U. S. circuit court. Filed Feb. 9, 1894. John A. Shields, clerk.

247 83 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 83, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of James C. Reed against The United States, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to
248 be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 26th day of February, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the said United States the one hundred and eighteenth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

84 At a stated term of the United States circuit court of appeals for the second circuit, held in the U. S. court room in the U. S. court-house in the city of New York, on the 4th day of June, 1894.

Present, Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, judges.

JAMES C. REED, PETITIONER & APPELLE,
against
THE UNITED STATES OF AMERICA, DEFENDANT & appellant.

The appeal of said defendant and appellant, The United States of America, from the judgment of the circuit court of the United States for the southern district of New York, entered on the 29th day of August, 1893, having come on to be heard and having been submitted by counsel of the respective parties and after due deliberation had;

It is now ordered, adjudged, and decreed that the said judgment of said circuit court be and the same hereby is in all things affirmed with

costs of this court to the said James C. Reed, appellee, to be taxed by the clerk of this court and to be recovered by said appellee in said circuit court.

85 It is further ordered that this cause be remanded to said circuit court with instructions to proceed therein according to law, and that a mandate issue to said circuit court accordingly.

E. H. L.
N. S.

Approved as to form, and notice of settlement waived.

HENRY C. PLATT,
U. S. Att'y.

(Endorsed:) U. S. circuit court of appeals. James C. Reed vs. The United States of America. Order affirming judgment. G. E. P. Howard, attorney for appellee, 32 Nassau street, N. Y. City. To Henry C. Platt, attorney for appellant. United States circuit court of appeals, second circuit. Filed Jun. 4, 1894. John A. Shields, clerk.

86 United States circuit court of appeals for the second circuit.

UNITED STATES, APPELLANT,
against
JAMES C. REED, APPELLEE.

To the Honorable the United States Circuit Court of Appeals:

The petition of the United States respectfully shows:

That upon the 7th day of April, 1891, the above-named appellee filed his petition in the circuit court of the United States for the southern district of New York against the above-named appellant, The United States, wherein said James C. Reed claimed that the said United States was indebted to him in the sum of $3,125.00 for disbursements by him as shipping commissioner at the port of New York.

That on the 29th day of August, 1893, a final decree was made and pronounced in the cause wherein it was in substance adjudged and decreed that the said James C. Reed recover of the United States the sum of $3,125.00.

That on the 8th day of February, 1894, the United States appealed from said final decree to the United States circuit court of appeals, which appeal was duly brought to argument in said court, and on the 2nd day of May, 1894, said final decree was therein duly affirmed.

87 Wherefore, by reason of the errors duly assigned herein, the said United States hereby present their petition and pray that the said proceedings and decree may be brought before the Supreme Court of the United States, that said Supreme Court may grant them such relief as may be proper in the premises.

And your petitioner will forever pray.

WALLACE MACFARLANE,
United States Attorney for the Southern District of New York.

The above application is granted and the appeal allowed.

Dated October 5, 1894.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court of appeals, second circuit. United States, appellant, versus James C. Reed, appellee. Petition for allowance of appeal. Wallace Macfarlane, United States attorney, attorney for plaintiff. United States circuit court of appeals, second circuit. Filed Oct. 18, 1894. John A. Shields, clerk.

88 United States circuit court of appeals for the second circuit.

JAMES C. REED, APPELLEE,
vs.
THE UNITED STATES, APPELLANT.

SIR: Please take notice that the United States, the above-named appellant, hereby appeals from the order and decree rendered herein in the United States circuit court of appeals for the second circuit on the 4th day of June, 1894, affirming a judgment rendered in the United States circuit court in the southern district of New York in favor of the above-named plaintiff and appellee, James C. Reed, and from the whole of said order and decree.

Dated New York, October 5, 1894.

WALLACE MACFARLANE,
U. S. Atty., Southern Dist., N. Y.

To G. E. P. HOWARD,
Attorney for Plaintiff and Appellee.

(Endorsed:) U. S. circuit court of appeals, second circuit. James C. Reed, appellee, versus United States, appellant. Notice of appeal. Wallace Macfarlane, United States attorney, attorney for defendant. United States circuit court of appeals, second circuit. Filed Oct. 18, 1894. John A. Shields, clerk.

89 Circuit court of appeals for the United States, of October term in the year of our Lord one thousand eight hundred and ninety-three.

THE UNITED STATES, APPELLANT,
against
JAMES C. REED, APPELLEE. } On appeal.

Afterwards, to wit, on the last Tuesday of October, in this same term, before the judges of the United States circuit court of appeals at the Federal court and post-office building, in the city of New York, comes the said United States, by Wallace Macfarlane, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit:

That the petition aforesaid and the matters therein contained are not sufficient in law for the said James C. Reed to have or maintain his aforesaid action thereof against the United States.

There is also error in this, to wit, that the court erred in finding as a conclusion of law that the petitioner was entitled to receive from the United States the sum of three thousand one hundred twenty-five dollars over and above the sum of five thousand dollars fixed as compensation
90 for and disbursements made by said James C. Reed; also in this, that the court erred in finding as conclusion of law that the peti-

tioner was entitled to judgment against the United States in the sum of three thousand one hundred and twenty-five dollars.

There is also error in this, that by the record aforesaid it appears that the judgment aforesaid given was given for the said James C. Reed against the United States, whereas by the law of the land the said judgment ought to have been given for the said United States against the said James C. Reed, and the said United States prays that the judgment aforesaid for the errors aforesaid and others in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

WALLACE MACFARLANE,
United States Attorney, Southern Dist., N. Y.

(Endorsed:) U. S. circuit court of appeals, second circuit. United States, appellant, versus James C. Reed, appellee. Assignment of errors. Wallace Macfarlane, United States attorney, attorney for plaintiff. United States circuit court of appeals, second circuit. Filed Oct. 5, 1894. John A. Shields, clerk.

91 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of appeals of the United States for the second circuit, to James C. Reed.

Whereas the United States has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of appeals of the United States for the second circuit, made in favor of you; therefore you are hereby cited to appear before the said Supreme Court, at the city of Washington, on the 29th day of October, 1894, to do and receive what may appertain to justice to be done in the premises.

Give' under my hand at the city of New York, in the southern district of New York, on the 5th day of October, 1894.

E. HENRY LACOMBE,
U. S. Circuit Judge.

92 (Indorsed:) SIR: You will please take notice that a , of which the within is a copy, was this day duly entered in the within entitled action, in the office of the clerk of the . Dated N. Y., , 189 . Yours, etc., , U. S. attorney, attorney for plaintiff. To , attorney for .

(Indorsed:) U. S. circuit court of appeals, second circuit. United States, appellant, versus James C. Reed, appellee. Citation. Wallace Macfarlane, United States attorney, attorney for plaintiff. Due service of a copy of the within is hereby admitted. New York, , 189 . , attorney for defendant. To , attorney for defendant. United States circuit court of appeals, second circuit. Filed Oct. 18, 1894. John A. Shields, clerk. U. S. circuit court. Filed Oct. 18, 1894. John A. Shields, clerk.

93 United States circuit court of appeals, second circuit.

UNITED STATES, PLAINTIFFS IN ERROR,
vs.
JAMES C. REED, DEFENDANT IN ERROR.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

John V. B. Merritt, being duly sworn, says that he is about the age of 21 years and upwards; that on the 6th day of October, 1894, at No. 32 Nassau street, New York City, N. Y., he personally served the annexed citation, notice of appeal, assignment of errors, and petition for appeal on G. E. P. Howard, esq., attorney for the defendant in error, by delivering to and leaving with said Howard copies thereof, and that he knew the person so served to be the attorney for the defendant in error.

JOHN V. B. MERRITT.

Subscribed and sworn to before me this 18th day of October, 1894.

GILBERT E. ROGERS,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

(Endorsed:) United States circuit court of appeals, second circuit. Filed Oct. 18, 1894. John A. Shields, clerk.

94 (Indorsed:) 342. The United States, appellant (Henry C. Platt), vs. James C. Reed, appellee (Geo. E. P. Howard). 1894, Mch. 8, filed transcript of record. Appeal from circuit court U. S., south. dist. N. Y. Mch. 23, filed 9 copies record, delivered 3 copies each side. June 4, affirmed in open court. No opinion. June 4, filed & entd. order for mandate. June 6, filed bill of costs. June 7 issued mandate. Oct. 5, filed assignment of errors. (Appeal to Supreme Court.) Oct. 18, filed notice of appeal, petition (allowed Oct. 5, '94), and citation (with affidavit of service).

95 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 94, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The United States, appellant, vs. James C. Reed, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 12th day of November, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the said United States the one hundred and nineteenth.

[SEAL.] JAMES C. REED, *Clerk.*

(Indorsed:) Examined. J. E. Dodge, Asst. Atty. Genl.

(Indorsement on cover:) Case No. 15728. Term No. 481. The United States, appellant, vs. James C. Reed. U. S. circuit court of appeals, second circuit. Filed November 15th, 1894.

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